



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 10-51 and 03-123; FCC 11-184]

Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission continues the process of reexamining the fundamentals of the Commission's Video Relay Service (VRS) rules to ensure the VRS program fulfills the goals set for the Commission in section 225 of the Communications Act (the Act). Specifically, the Commission sets forth a series of options and proposals to improve the structure and efficiency of the program, to ensure that it is available to all eligible users and offers functional equivalence – particularly given advances in commercially-available technology – and is as immune as possible from the waste, fraud, and abuse that threaten the long-term viability of the program as it currently operates.

DATES: Interested parties may file comments on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 10-51 and 03-123, by any of the following methods:

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site <http://fjallfoss.fcc.gov/ecfs2/>. Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and **CG Docket Nos. 10-51 and 03-123**.

- Paper filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, or via email to fcc@bcpiweb.com.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document.

FOR FURTHER INFORMATION CONTACT: Dana Wilson, Consumer and Governmental Affairs Bureau, (202) 418-2247; email: Dana.Wilson@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rulemaking, FCC 11-184, adopted December 15, 2011, and released December 15, 2011, in CG Docket Nos. 10-51 and 03-123, seeking comment on a series of options and proposals to improve the structure and efficiency of the program, to ensure that it is available to all eligible users and offers functional equivalence – particularly given advances in commercially-available technology – and is as immune as possible from the waste, fraud, and abuse that threaten the long-term viability of the program

as it currently operates. The full text of document FCC 11-184 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. Document FCC 11-184 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW, Room CY-B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its web site, www.bcpweb.com, or by calling 1-800-378-3160. FCC 11-184 can also be downloaded in Word or Portable Document Format (PDF) at: <http://www.fcc.gov/cgb/dro/trs.html#orders>. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments and reply comments must include a short and concise summary of the substantive discussion and questions raised in the document FCC 11-184. The Commission further directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. Comments and reply comments must otherwise comply with 47 CFR 1.48 and all other applicable sections of the Commission's rules.

- Pursuant to 47 CFR 1.1200 et. seq., this matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must: (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or

arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

INITIAL PAPERWORK REDUCTION ACT OF 1995

Document FCC 11-184 seeks comment on potential new information collection requirements. If the Commission adopts any new information collection requirement, the Commission will publish another notice in the Federal Register inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

SYNOPSIS

I. INTRODUCTION

1. Video relay service (VRS) allows persons with hearing or speech disabilities or who are deaf-blind to use American Sign Language (ASL) to communicate in near real time through a communications assistant (CA), via video over a broadband Internet connection. In document FCC 11-184, the Commission continues the process of reexamining the fundamentals of the Commission's VRS rules to ensure the VRS program fulfills the goals set for the Commission in section 225 of the Act. Specifically, the Commission sets forth a series of options and proposals to improve the structure and efficiency of the program, to ensure that it is available to all eligible users and offers functional equivalence – particularly given advances in commercially-available technology – and is as immune as possible from the waste, fraud, and abuse that threaten the long-term viability of the program as it currently operates. The Commission solicits comment on these options and proposals to ensure that this vital program is effective, efficient, and sustainable for the future.

II. STRUCTURAL ISSUES WITH THE CURRENT VRS PROGRAM

2. Our overarching goal in this proceeding is to improve the VRS program so that it better promotes the goals Congress established in section 225 of the Act. Specifically, the Commission seeks to ensure that VRS is available to all eligible users, is provided efficiently, offers functional equivalence, and is as immune as possible to the waste, fraud, and abuse that threaten its long-term viability. The Commission notes that this is largely consistent with the goals outlined in the recent Consumer Groups' TRS Policy Statement, and that the Commission seeks to reform VRS in accordance with these goals to the extent possible. In developing the records of the VRS-related proceedings discussed above, and in particular based on the submissions to the VRS program structure and practices proceeding (CG Docket No. 10-51), the Commission has identified a number of structural issues with the current program that have not only detracted from its historical success in providing communications services to individuals who are deaf, hard of hearing, deaf-blind, or have a speech disability, but may also threaten its future success.

These issues – which the Commission seeks to address with the proposals set forth and the questions raised in document FCC 11-184 – include the following: (i) broadband affordability may be restricting the availability of VRS, (ii) VRS access technology standards may be insufficiently developed, frustrating the program’s technology goals, and potentially resulting in inappropriate lock in of VRS users, (iii) the current VRS compensation mechanism is unpredictable and potentially inefficient, (iv) the structure of the VRS industry is potentially suboptimal and inconsistent with the goals of the Act, and (v) the current VRS compensation mechanism has proven vulnerable to waste, fraud, and abuse. The Commission discusses and seeks comment on each in turn below.

A. Broadband Affordability May Be Restricting the Availability of VRS

3. The National Broadband Plan identified broadband affordability as a major barrier to broadband adoption. Although the Commission unfortunately lacks systematic data, the Commission has anecdotal and other evidence to suggest that this broadband affordability barrier may be particularly acute for the deaf and hard of hearing community, such that some people who would benefit from VRS are unable to afford the required broadband Internet access service. For example, as one commenter observed, a disproportionate number of deaf American adults are unemployed, receive Social Security, live in poverty, or have household income below \$20,000; broadband penetration among this community is therefore likely to be lower than the national average of approximately 65%. Thus, the Commission finds it reasonable to presume that some of those deaf Americans who have low incomes live in areas where broadband is available, yet they do not subscribe due to the expense. Further, though there is no definitive estimate of the number of Americans with hearing or speech disabilities who are fluent enough in ASL to use VRS, there are likely to be such individuals who would benefit from VRS but cannot afford the necessary broadband Internet access service.

4. The Consumer Groups’ TRS Policy Statement urges the Commission to give consideration to regulatory initiatives that can “meet the broadband access needs of people with hearing and speech disabilities.” Indeed, any gap between the number of individuals who subscribe to VRS and the number of

individuals who would subscribe but for the expense of broadband Internet access may represent a potential failure of our statutory obligation to make TRS “available . . . to the extent possible,” as the Commission believes VRS is effectively unavailable to those who cannot afford broadband Internet access. Now that the base of VRS users has grown significantly, the Commission is concerned that the broadband-penetration ceiling may have become a constraint on the availability of the program. The Commission seeks information and data from commenters that would help us better analyze whether there is a gap between potential VRS demand and actual VRS subscribership attributable to the expense of broadband Internet access.

B. VRS Access Technology Standards May Be Insufficiently Developed

5. Under the present VRS model, multiple providers offer substantially similar services with no opportunity for price competition, as end users receive the service at no cost. Despite this, however, the program supports more than one provider to allow VRS users choice between providers who compete on factors such as quality of service, customer service, and technological development. This is consistent with the goal expressed by the Consumer Groups to ensure “intense competition among a number of qualified vendors in the telecommunications relay services market to give the TRS user population a range of choices in features and services”

6. Although the Commission has adopted general rules to facilitate this non-price competition, such as requiring that VRS providers ensure interoperability with competing providers and that the technologies used to access VRS services be portable between providers, the record indicates that these rules, in practice, have met with limited success in two particular areas: ensuring that VRS providers have a real opportunity to compete for other providers’ VRS users, and facilitating VRS users’ access to off-the-shelf VRS access technology. The Commission questions whether it makes sense to spend Fund resources supporting multiple providers to ensure that such choice is available in principle if most VRS users cannot in practice take advantage of such choice (e.g., because of a lack of interoperability and/or portability of

VRS access technology), and explore below new approaches to making consumer choice and effective competition a reality.

1. VRS Users May Be “Locked In”

7. The Commission has adopted interoperability and portability rules to facilitate competition among providers. Every VRS provider is required to provide its users with the capability to register with that VRS provider as a “default provider.” Such registration is required: (1) to allow the VRS provider to take steps to associate the VRS user’s telephone number with their IP address to allow for the routing and completion of calls; (2) to facilitate the provision of 911 service; and (3) to facilitate the implementation of appropriate network security measures. On the other hand, our interoperability and portability rules are intended to (i) allow VRS users to make and receive calls through any VRS provider, and to choose a different default provider, without changing the VRS access technology they use to place calls, and (ii) ensure that VRS users can make point-to-point calls to all other VRS users, irrespective of the default provider of the calling and called party.

8. Under the Commission’s Internet-based TRS Numbering Order, published at 73 FR 41286, July 18, 2008 and 73 FR 41307, July 18, 2008; and Second Internet-based TRS Numbering Order, published at 73 FR 79683, December 30, 2008 (together, the Internet-based TRS Numbering Orders), providers must ensure that videophone equipment that they distribute retain certain, but not all, features when a user ports his number to a new default provider. Specifically, a default provider that furnishes videophone equipment to a consumer need not ensure that the videophone equipment’s “enhanced features” (e.g., address book, speed dial list) can be used when the consumer ports the number to and uses the videophone equipment with the new provider. Further, those enhanced features are, in most cases, impossible to port to new equipment obtained from the new default provider. Indeed, notwithstanding some level of industry effort, there is no set of common technical standards that will ensure such enhanced feature functionality remains after a customer ports to a new provider. Consequently, the Commission is concerned that VRS users may be effectively “locked in” to their existing providers by their wish to

continue to use these non-standardized enhanced features. Indeed, many VRS users appear to be reluctant to switch to a new default provider because alternative default providers find it difficult to support many of the enhanced features of users' existing videophones, posing an unacceptably high switching cost. The Commission notes that the Consumer Groups' TRS Policy Statement emphasizes the importance of "[t]otal interoperability . . . for equipment software and services from all vendors (for any forms of TRS) with no loss of core functionality." As consumers note, full interoperability, including the ability to make point to point calls, "ensures greater protection for TRS users' safety, life, health, and property."

9. The Commission seeks comment on the effectiveness of our current interoperability and portability requirements, and the role that existing VRS access technology standards – or the lack thereof – may play in frustrating the effectiveness of those requirements. Consumers further seek "a conducive climate for healthy market competition" in all forms of TRS." The Commission is concerned that VRS users may not be able to enjoy the benefits of non-price competition between multiple providers if, in fact, switching costs are so high that there is little prospect that consumers will actually switch default providers? Is the rationale for structuring the VRS program to afford competitive alternatives to VRS users drawn into question in the absence of technical standards that will reduce or eliminate such switching costs, including non-monetary costs such as those associated with the loss of enhanced features? If it is not possible to reduce switching costs to a level that does not frustrate the effectiveness of our current interoperability and portability requirements, should the Commission simply bid contracts for one or a limited number of VRS providers to offer VRS service, as smaller providers may have little hope of gaining market share by winning customers from larger providers? The Commission notes that such contracts would likely result in efficiency gains for the Fund by inducing price competition for the contract and/or eliminating the need to perpetually support sub-scale providers at higher rates. The Commission seeks comment on the impact such an approach would have on users. Given that the vast majority of users currently choose to obtain service from one provider, would it be correct to conclude that the impact would be minimal, or would the loss of additional competition – even by providers with small market shares –

risk harmful consequences in terms of loss of innovation and consumer choice? If yes, the Commission asks commenters to provide specific details supporting this conclusion.

2. VRS Users May Not Have Appropriate Access to Off-The-Shelf Technology

10. When VRS was first launched a decade ago, videotelephony was a specialized, niche market requiring customized hardware and software, as well as frequently unavailable broadband Internet access service. It has now become a mainstream, mass-market offering. Indeed, currently available commercial video technology can provide closer functional equivalence, may be less costly, and is likely to improve at a faster pace than the custom devices supplied exclusively by VRS providers, so that the installed base of VRS access technology may be (or may soon become) inferior to “off-the-shelf” offerings.

11. As described in greater detail in Appendix B of document FCC 11-184, in 2006 the industry migrated to a standard for transmitting real-time voice and video over packet-based networks called H.323, but has failed to make progress on the standardization needed to transition to the Session Initiation Protocol (SIP) family of standards, which has subsequently become the default for mass market Internet-based voice and video devices. In addition, as discussed in paragraph 8 above, there are no standards in place to facilitate transferring videophone equipment’s enhanced features (e.g., address book, speed dial list) when the consumer ports their number to and uses the videophone equipment with a new provider.

12. The Commission notes that the Consumer Groups’ TRS Policy Statement emphasizes the need for the Commission to support technological innovation that will contribute to the quality and efficiency of TRS. In particular, the Consumer Groups request that we engage in “[a]n ongoing effort . . . to ‘raise the bar’ in technological design and operations efficiency.” The Commission seeks comment on whether the lack of progress on standards development in the VRS industry is serving as a barrier to the introduction of potentially superior, and less expensive, off-the-shelf technology into the VRS market. What other barriers limit introduction of off-the shelf technology into the VRS market? Are there other mechanisms that can be used to encourage the introduction of off-the-shelf technology in the VRS market? How would

advances for off the shelf technology be impacted if the Commission were to bid contracts for one or a limited number of VRS providers to offer VRS service?

C. The Current VRS Compensation Mechanism is Unpredictable and Potentially Inefficient

13. As discussed above, the per-minute rate for compensating VRS providers has fluctuated significantly over time, resulting in uncertainty and controversy. Indeed, providers have frequently complained about uncertainty in the rate setting process due to the frequency with which rates have been recalculated and disagreements regarding the nature of the costs for which compensation may be provided. They explain that such uncertainty has impeded their ability to make long term plans. The current rate setting mechanism has also negatively affected the telecommunications carriers that are required to contribute to the TRS Fund. The Commission would like to create stability and long-term predictability in the compensation mechanism, to the benefit of the providers, contributing carriers, and all consumers.

14. In addition to the problems related to the rate fluctuations described above, several features of the VRS program make it difficult to manage costs and reimbursements. First, although there are many VRS users and multiple VRS providers, the users neither receive nor send price signals because the service is provided at no charge to them. Thus, there is no opportunity for the market to set prices, enable price competition, determine industry structure, or influence demand. Second, the TRS Fund is effectively the sole purchaser of VRS services but, unlike a normal market participant, the Fund cannot “choose” the volume (i.e., number of VRS minutes) to purchase, and so has no control over total expenditures once rates are set. Third, costs incurred by VRS providers are not necessarily aligned with the reimbursements the Fund provides on a per-minute basis. That is, many of a VRS provider’s costs do not vary directly with the number of minutes of service provided (e.g., equipment, call center infrastructure, CA supervision, marketing/outreach, general and administrative (G&A) expenses). Further, to the extent that that providers’ other sources of revenue are de minimis and all VRS provider’s costs are explicitly or implicitly supported by the Fund, there is frequent controversy over whether activities such as those related to

customer acquisition and retention, equipment subsidies, and financing (e.g., interest payments) are legitimate or not. For these reasons – as well as those related to waste, fraud, and abuse described below – the Commission is concerned with the efficiency of the current per-minute compensation scheme. The Commission seeks comment on this assessment of the efficiency of our per-minute compensation mechanism, and whether there are other factors that we should consider in restructuring the VRS compensation mechanism to improve its predictability and efficiency.

D. The Current Structure of the VRS Industry is Inefficient

15. At present, there are twelve companies eligible for reimbursement from the Fund for VRS. In addition, until recent rule changes, approximately fifty additional “white label” companies marketed or offered VRS under their own names and received compensation from the Fund indirectly. At present, however, a single provider is handling the vast majority of VRS minutes. As a result, while this provider enjoys significant economies of scale, the remaining providers are able to cover their costs only because of the Commission’s adoption of a tiered rate structure, which compensates providers with fewer minutes of use at a higher rate per minute. As a result, as Table 1 shows, a disproportionate amount of the monthly compensation for VRS is paid at the subscale Tier I and Tier II rates. Indeed, if all minutes handled were compensated at the Tier III “at scale” rate, the Fund would immediately save over \$2 million per month – a reduction in the size of the Fund of approximately 5%.

Tier	Tier Structure	Minutes Compensated	Compensation Rate	Reimbursement	% Reimbursement	% Minutes	\$/minute (ratio)
I	≤ 50,000 minutes	315,157	\$6.24	\$2 million	4.19%	3.56%	1.18
II	50,001-500,000 minutes	1,491,340	\$6.23	\$9.3 million	19.77%	16.84%	1.17
III	> 500,000 minutes	7,047,330	\$5.07	\$35.7 million	76.04%	79.6%	0.96
	Totals:	8,853,827	n/a	\$47 million	100%	100%	n/a

Table 1

16. Recognizing that the industry structure going forward may be influenced by factors including the desire and ability of existing VRS users to switch providers, the number of new VRS users who enter the market, and the rate structure (e.g., the willingness of the Fund to support subscale players for a definite or indefinite period of time and the absolute level(s) of compensation), the Commission seeks comment on whether the current market structure – namely, a single large provider with numerous subscale providers – represents an appropriate balance between consumer choice and efficiency.

E. The Current VRS Compensation Mechanism Has Proven Vulnerable to Waste, Fraud, and Abuse

17. The compensation of VRS providers on a per-minute basis creates an inherent incentive for providers to seek ways to generate minutes of use solely for the purpose of generating “compensable minutes,” rather than to provide legitimate services to VRS users. Illegitimate minutes are difficult to detect on an ex post basis, particularly when comingled with legitimate minutes or submitted by eligible providers on behalf of non-eligible “white label” providers. The U.S. Department of Justice, working in cooperation with the FCC’s Office of Inspector General (OIG), has actively pursued individuals alleged to

have manufactured and billed the TRS Fund for illegitimate minutes of use, and the Commission has adopted rules to bolster the certification process and discourage fraud and abuse. Even the best auditing mechanisms are imperfect, however, and so it is preferable to change the structural incentives of providers to discourage such abuse in the first place and increase our ability to detect it if it does occur along with strong oversight and auditing.

III. PROPOSED REFORMS TO THE VRS PROGRAM TO ADDRESS STRUCTURAL ISSUES

18. The Commission sets forth below detailed proposals to address the structural issues identified in section II, above. The Commission seeks comment on these proposals, and emphasizes the importance of comments being detailed, specific, and supported by data wherever appropriate.

A. Ensuring That VRS is “Available”

19. To the extent that the record shows that there is unaddressed demand for VRS, the Commission proposes to (i) promote residential broadband adoption via a pilot program to provide discounted broadband Internet access to low-income deaf, hard of hearing, deaf-blind, and speech disabled Americans who use ASL as their primary form of communication, and (ii) provide an incentive payment to providers for adding new-to-category customers.

1. Promoting Residential Broadband Adoption by Low-Income Americans with Disabilities

20. Commenters in this docket have advocated for the creation of a program to subsidize or otherwise make available broadband Internet access to Americans who are unable to access VRS because they cannot afford broadband Internet access. Such a program would be consistent with the recommendations of the National Broadband Plan, the Commission’s broader efforts to meet the 21st century communications needs of low-income consumers, and the Act.

21. The Commission therefore seeks comment on establishing a “TRS Broadband Pilot Program” (TRSBPP) to utilize the TRS Fund to provide discounted broadband Internet access to low-income deaf, hard of hearing, deaf-blind, and speech disabled Americans who use ASL as their primary form of communication. The Commission aims to ensure that any such program is both effective, by expanding the potential base of VRS users to include those who could not otherwise afford broadband, and efficient in its structure and operation. A detailed proposal to implement a TRSBPP is set forth in Appendix A of document FCC 11-184. The Commission seeks comment on our legal authority to implement such a program in section VI.

2. Providing Incentives to Providers for Adding New-To-Category Customers

22. A VRS provider’s legitimate marketing and outreach costs are currently compensable from the Fund as part of the per-minute rate. Providers argue that marketing and outreach is a critical component of the service they provide. However, the appropriateness of certain marketing and outreach costs claimed by providers has been the source of controversy, as have provider marketing practices. Moreover, under the existing per-minute compensation system, providers have had a greater incentive to target existing VRS users than to focus outreach either on “new-to-category users,” i.e., potential VRS users that are not yet registered with any provider as a VRS user or members of the general public.

23. The Consumer Groups’ TRS Policy Statement asks the Commission to address deficiencies in outreach and research and development. They express the concern that countless Americans on fixed incomes may not be aware of resources for accessing TRS, or the capabilities and features that TRS has to offer. They also note that “[r]elay services are equal access programs that are just as useful and critically important for those with or without hearing and speech disabilities,” and advocate for TRS promotional activities to acquaint the public and private sectors, including employers, educational institutions, and businesses, about TRS to “build familiarity and acceptance of TRS nationwide.” Accordingly, the Commission seeks comment on ways to ensure that providers are making potential users aware of VRS in a manner consistent with the goals of section 225 of the Act. In particular, the Commission seeks

comment on ways to provide incentives for providers to (i) be more efficient in their marketing and outreach efforts, (ii) ensure that VRS is available to more potential users by focusing their efforts on new-to-category users instead of existing VRS users, (iii) determine whether such efforts are effective in reaching potential users, and (iv) ensure that their outreach efforts build familiarity about VRS within the general public. The Commission also seeks comment on how governmental and non-governmental entities, such as the FCC, the United States Department of Health and Human Services, state and local governments, and nonprofit organizations, can help make potential users aware of VRS.

24. One proposal would be to cease reimbursing providers for marketing and outreach based on their individual expenses for these activities, and instead implement a one-time, fixed incentive payment to VRS providers from the TRS Fund for each new-to-category VRS user they sign up, starting some time after the effective date of a final order in this proceeding. Such a system would align compensation with actual results and encourage VRS providers to focus their marketing and outreach efforts primarily on finding and signing-up new-to-category customers instead of merely trying to persuade existing VRS users to switch providers, which – while a valid commercial goal – is not a reasonable and legitimate expense for the Fund. By providing a fixed payment for each successful user sign-up, it would encourage providers to find the most efficient means of recruiting new users and focus Fund expenditures on fulfilling the goals set forth in section 225 of the Act. Further, to the extent that the marginal cost of adding a new customer is rising, for example, because providers are approaching the broadband-penetration ceiling, a fixed incentive payment could better compensate providers for the cost of adding a new-to-category customer. The Commission seeks comment on whether such an incentive payment will better align Fund expenses and providers’ incentives with the goals of efficiency and availability by replacing the un-measurable effects of “marketing and outreach” with a concrete, transparent, and success-based mechanism.

25. If a new-to-category incentive payment were to be adopted, how could the Commission ensure that the payment is made only for signing up VRS users that were not previously registered for iTRS, or were not previously able to access VRS because, for example, they could not afford broadband Internet

access? One proposal would be to define, for purposes of marketing and outreach compensation, the terms “VRS user” and “new-to-category VRS user.” For example, a “VRS user” could be defined as “as an individual that has registered with a VRS provider as described in § 64.611 of the Commission’s rules.” This definition is consistent with our definition of “Registered Internet-based TRS User,” but distinguishes “VRS users” from the larger universe of Registered Internet-based TRS Users to reflect the changes the Commission proposes to make to the VRS program in document FCC 11-184. “New-to-category VRS user” could be defined as “a VRS user that has never previously registered with any provider of Internet-based TRS.” The Commission seeks comment on whether these definitions would appropriately limit new-to-category incentive payments, or whether different and/or additional definitions would better achieve the stated purpose of the new-to-category incentive payment. Should these definitions explicitly state that VRS users and new-to-category VRS users must be “deaf, hard of hearing, deaf-blind, or [have] a speech disability?” Should the new-to-category incentive payment be limited to one-per-household or one-per residence? Should other factors be considered? For example, should there be a minimum age requirement for VRS users, so as to ensure that infants or small children are not registered prior to their being able to actually use the service? Should incentive payments be limited to one-per-household or one-per-residence as is contemplated for the TRSBPP? The Commission seeks comment on whether a consumer’s decision to obtain services supported by the TRSBPP, if adopted, should affect eligibility for the Lifeline or Link Up programs, or vice versa.

26. If a new-to-category incentive payment were to be adopted, how should providers prove eligibility for payments from the TRS Fund? What type of information should providers obtain to ensure that an individual that claims to be or appears to be a new-to-category VRS user is actually a new-to-category VRS user. Given that hearing individuals should not be Registered Internet-based TRS users, should proof that new-to-category VRS users are “deaf, hard of hearing, deaf-blind, or [have] a speech disability” be required? What method or methods should a provider use to verify or validate the information provided by a potential new-to-category VRS user? Should the Commission establish a

standard certification form? Should providers establish a validation or verification process? Should the Commission establish guidelines or detailed rules governing what constitutes an acceptable verification or validation process? Should there be only one acceptable process, or should providers be entitled to use one of several methods to validate or verify information provided to support categorization as a new-to-category VRS user?

27. If a new-to-category incentive payment is adopted, how should the Commission calculate the amount of such payment? One methodology would be to use as a basis the average or median cost per gross addition (CPGA) of certified VRS providers over the most recent one year period. The Commission therefore requests that all commenting parties submit their CPGA for their most recent fiscal year, including a description of how the CPGA was calculated and the cost, revenue, and subscriber data used to calculate the figure. Another methodology would be to set the incentive payment as the sum of the reasonable costs of adding a new customer, which would include marketing, equipment, setup, and other reasonable costs. To the extent commenters support such a methodology, the Commission requests that they submit a proposed list of costs and fully justified estimates for those costs. To the extent commenters wish to propose another method for setting the incentive payment, they should provide a detailed explanation and justification for their proposed dollar amount per new-to-category user. The Commission invites comment on all aspects of this new-to-category incentive payment proposal.

28. If a new-to-category incentive payment is adopted, what impact would such adoption have on the Fund contribution factor? Would the reduction in reimbursements for individual provider marketing and outreach expenses offset claims for incentive payments? Is it necessary to ensure that there is not a sudden increase in the Fund contribution factor? One proposal would be to cap the number of incentive payments at a fixed number per year. For example, if incentive payments were limited to 50,000 per year, and there is a pool of 200,000 potential new-to-category VRS users who could register, it would spread the cost over at least four years. The Commission seeks comment on whether an annual cap on the number of payments is appropriate and, if so, at what level the cap should be set. The Commission also seeks

comment on whether the duration of the incentive payment should be limited. Should the incentive payment continue to be available in perpetuity, or is it sufficient to make the payment available only during the transition period discussed in section IV.B.15?

29. The Commission seeks comment on whether a new-to-category incentive payment program could help address the market structure issue addressed in section II.D above. Could those certified VRS providers that are currently subscale increase their growth prospects if the new-to-category incentive payment is limited to providers that have less than the number of users the Commission estimate is necessary to achieve minimum efficient scale? As the Commission explains in greater detail below, we believe that having all providers of VRS operating at minimum efficient scale will improve the efficiency of the VRS program by ensuring that the Fund does not indefinitely subsidize providers that have less efficient cost structures. The Commission proposes that new users would not be prohibited from registering with providers that already have more than the number of users it takes to achieve scale – but such providers would not be eligible for the incentive payment because they already have achieved minimum efficient scale and presumably have less need for an additional financial incentive to promote awareness of their brand (as well as greater financial resources for marketing and outreach). The Commission seeks comment on this proposal.

30. The Commission seeks comment on whether there are additional specific steps the Commission should take to incent providers to refocus their efforts away from merely churning users between providers and toward finding and adding new-to-category VRS users who have not been able to benefit from VRS to date. The Commission also seeks comment on steps that it should take to reduce the increasing incidence of relay hang-ups by businesses and others who not acquainted with TRS, as well as general measures needed to familiarize the general public about the existence and purpose of TRS. Finally, the Commission seeks comment on whether there are specific actions the Commission should take to supplement provider outreach efforts to expand the availability of VRS to more users and build acceptance of VRS in the greater community.

31. If a new-to-category incentive payment is adopted, what impact would such adoption have on research and development relating to VRS and, more broadly, TRS? Would providers have sufficient incentive and means to invest in research and development on VRS access technology, improving their call platforms, and/or other aspects of the provision of VRS? Would the introduction of standards for iTRS access technology facilitate research and development by VRS providers? Would such standards incent equipment manufacturers that have not traditionally invested in VRS and other TRS technologies to do so going forward? What other steps could the Commission take to promote research and development in VRS and other forms of TRS?

B. Addressing VRS User Lock In and Access to Advanced Technology

1. Defining VRS Access Technologies

32. The Commission in the First Numbering Order used the defined term “CPE” to describe “TRS customer premises equipment,” or the technology used to access Internet-based TRS. Because the use of this term has created some confusion among providers as new access technologies have been brought to market, and to distinguish the equipment, software and other technologies used to access VRS from “customer premises equipment” as that term is defined in section 3 of the Act, the Commission proposes to amend §§ 64.605 and 64.611 of its rules by replacing the term “CPE” where it appears with the term “iTRS access technology.” The Commission proposes to define “iTRS access technology” as “any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make or receive an Internet-based TRS call.” Thus, any software, hardware, or other technology issued, leased, or otherwise provided to VRS or IP Relay users by Internet-based TRS providers, including “provider distributed equipment” and “provider based software,” whether used alone or in conjunction with “off-the-shelf software and hardware,” would qualify as “iTRS access technology.” Given the differential treatment of VRS and IP Relay proposed in document FCC 11-184, the Commission further proposes to refer separately to iTRS access technology as “VRS access technology” and “IP Relay access technology” where appropriate. The Commission seeks comment on this proposal.

2. Establishing Standards for iTRS Access Technology

33. Prior to the Commission's establishment of its Part 68 rules in 1975, terminal equipment was manufactured almost exclusively by Western Electric, which was part of the Bell System of companies that included the monopoly local exchange and long distance providers in most parts of the country. This ensured that no harmful terminal equipment was connected to the public switched telephone network, but also created a monopoly in the development and manufacture of terminal equipment. The Part 68 rules are premised on a compromise whereby providers are required to allow terminal equipment manufactured by anyone to be connected to their networks, provided that the terminal equipment has been shown to meet the technical criteria for preventing network harm that are established in the Part 68 rules. The Commission's Part 68 rules have facilitated a vibrant, competitive market for terminal equipment, reducing prices and resulting in a proliferation of new equipment and capabilities available to consumers.

34. The Commission seeks comment on whether the effectiveness of our interoperability requirements and functional equivalence could be improved by the creation of VRS access technology standards that are conceptually similar to the Part 68 standards for traditional CPE. Development of such standards may help to resolve the issue of VRS user lock in described in section II.B.1 by giving VRS users assurance that they will be able to continue to use their existing VRS access technology even if they choose to register with a new VRS provider, and that they will not lose access to enhanced features that have proven to be of particular importance to end users. The Commission also expects that a properly developed set of standards, and a properly developed, consensus driven process for maintaining and updating those standards, is consistent with, and could serve as a step towards, the accessibility of interoperable video conferencing services under the CVAA, and ultimately could result in widespread use of off-the-shelf technology both for VRS and for point-to-point calls.

35. Appendix B of document FCC 11-184 sets forth a detailed proposal for developing and maintaining VRS access technology standards based primarily on SIP. The Commission seeks comment on this proposal. The process described in that appendix is intended to develop an open, competitive VRS

market, and is designed to facilitate interoperability, portability, affordability, supportability and compatibility goals that the Commission has long pursued and consumers have requested. Establishing VRS access technology standards may give providers a fair chance to compete and grow and could resolve the problem of users being locked in to their existing providers because of iTRS access technology constraints.

36. To ensure all VRS access technologies that VRS providers issue, lease, or otherwise provide to VRS users are compliant with any standards that we establish in this proceeding, we propose to adopt, or to incorporate by reference into our rules, any such standards. Non-compliance would then constitute an enforceable violation of Commission rules. The Commission seeks comment on this proposal. What effect would such a proposal have on existing VRS access technology currently in use? Should VRS providers that issued, leased, or otherwise provided VRS access technology to VRS users be required to ensure that such legacy VRS access technology is fully compliant with any standards adopted or, alternatively, removed from use within some discrete period of time (e.g., 12-18 months)? The Commission notes that the burden of making the existing base compliant may be reduced to the extent that legacy devices are reaching the end of their natural lives. If the Commission's interoperability and portability rules are not effectively enforced with respect to the existing base of VRS users and new-to-category users, will this prevent smaller providers from growing, and hence prevent a more efficient industry structure from being attained? In practice, no provider has an incentive to make its customers more contestable, even if this benefits VRS users, and so the Commission seeks comment on how to ensure that any standards adopted are actually implemented. For example, should VRS minutes generated using equipment that does not meet any standards adopted be non-compensable?

37. The Commission notes that the Commission has previously sought comment on whether to "mandate specific Internet protocols that VRS providers must use to receive and place VRS calls." The Commission's intent in document FCC 11-184 is not to lock providers into a particular set of protocols, which could have the effect of discouraging or impairing the development of improved technology.

Rather, our goal is to establish functional requirements, guidelines, and operations procedures for VRS that will encourage the use of existing and new technologies, and allow the industry to expand and evolve in a way that the lack of standards to date has inhibited, in particular by facilitating the use of off-the-shelf equipment and preventing the use of equipment and lock in as a tool for limiting consumers' choice of providers.

38. Given the focus of document FCC 11-184 on the VRS program, the Commission does not propose to establish standards for iTRS access technology used to access IP Relay or other forms of iTRS at this time. The Commission expects, however, that to the extent such standards are warranted, the establishment of standards for the VRS program may serve as a model for other Internet-based TRS programs.

3. Off-The-Shelf iTRS Access Technology

39. Commenters responding to the VRS Technology Public Notice, published at 76 FR 11462, March 2, 2011, generally state that off-the-shelf VRS access technology hardware (i.e., commercially available computing and communications equipment such as laptops, mobile phones, and tablet computers with broadband Internet access and a front facing camera such as the Apple iPad2) is becoming increasingly available and popular among both VRS providers and VRS users – a dramatic change since VRS was first introduced. Commenters also note the benefits of developing VRS applications that run on off-the-shelf hardware, including that it is based on common commercial protocols and that “competing VRS providers can all design for any open platforms.” Conversely, commenters have argued that proprietary videophones developed by providers are a source of VRS user lock in. The Commission therefore seeks comment on whether the effort to develop and maintain VRS access technology standards discussed in the preceding section would be furthered by phasing in a requirement that all VRS access technology hardware used to make compensable VRS calls be “off-the-shelf.” Would limiting providers to making modifications to or developing software for existing commercial platforms help or hinder the effort to ensure portability and interoperability? Is such a rule consistent with the Commission’s

obligation to “encourage . . . the use of existing technology and . . . not discourage or impair the development of improved technology?” How should “off-the-shelf” be defined for the purpose of such a rule? Should special purpose videophones be treated differently than other hardware, such as laptops, tablets, or smartphones? What other factors must be considered if VRS providers are allowed to provide users only off-the-shelf VRS access technology hardware?

4. Funding iTRS Access Technology

40. The Commission has consistently held that costs attributable to the user’s relay hardware and software, including installation, maintenance, and testing, are not compensable from the Fund. As the Commission has explained, “compensable expenses must be the providers’ expenses in making the service available and not the customer’s costs of receiving the equipment. Compensable expenses, therefore, do not include expenses for customer premises equipment – whether for the equipment itself, equipment distribution, or installation of the equipment or necessary software.”

41. The Commission also recognizes, however, that providers continue to provide VRS access technology to VRS users free of charge, and that in many cases these providers’ primary or only source of revenue may be the TRS Fund. The TRS Fund is likely, therefore, implicitly or indirectly funding iTRS access technology costs. But because this funding is implicit or indirect, the Commission has no data on how many units of hardware or software are being distributed by providers, how many users are receiving iTRS access technology from providers, how much money is being spent on manufacturing, installation and maintenance, or other data that could help the Commission ensure that the TRS program is being run in as efficient a manner as possible, and in a manner that fully meets the needs of VRS users.

42. The Commission does not seek to alter our prior decision that equipment costs are not “costs caused by interstate telecommunications relay service.” The Commission seeks comment, however, on whether the “availability” mandate in section 225(d)(3) of the Act, discussed in greater detail in section VI below, provides the Commission authority to collect contributions to the TRS Fund to support iTRS access technology for VRS users and to disburse the relevant support. Would providing explicit compensation for

iTRS access technology help further the goal of ensuring that TRS is “available, to the extent possible and in the most efficient manner?” Would the Commission be in a better position to collect data on costs associated with iTRS access technology if an explicit funding mechanism were in place? Should iTRS access technology funding be limited to low income consumers, as is contemplated in the discussion of the TRSBPP above, or would it be more appropriate to allow iTRS access technology costs to be covered by the TRS Fund for all VRS users? If the TRS Fund is used to support iTRS access technology, should the Commission require that ownership of supported technology be passed to VRS users to help reduce the possibility of user lock in? What other legal and policy issues are relevant to the discussion of whether VRS access technology costs should be explicitly (rather than implicitly) compensable from the TRS Fund?

43. To the extent that the Commission finds it has the authority to provide compensation for iTRS access technology, the Commission does not, given the focus of document FCC 11-184 on the VRS program, propose to provide explicit compensation for iTRS access technology used to access IP Relay or other forms of iTRS at this time. The Commission expects, however, that to the extent a VRS access technology funding program proved successful, the VRS program may serve as a model for other Internet-based TRS programs.

C. Instituting a More Efficient Compensation Mechanism and Reducing Incentives for Waste, Fraud, and Abuse

44. The Commission long has questioned whether a per-minute compensation methodology is appropriate for VRS, due in no small part to the significant difficulty of determining a “reasonable” per-minute compensation rate for VRS, given issues concerning CA staffing, labor costs, and engineering costs particular to VRS. Although there has been significant effort directed to determining what categories of provider costs should be compensable from the Fund, the Commission has not recently examined the fundamental question of whether a tiered, per-minute compensation model is best suited to VRS.

45. Based on information VRS providers have submitted to the Commission, the Commission believes that a tiered, per-minute compensation model may not be the most appropriate for VRS because it does not align compensation with costs (leading to structural inefficiency and lack of transparency), it provides a structural incentive to increase the number of VRS minutes billed to the Fund (leading to fraud), and it sustains numerous subscale players (leading to waste). The Commission recognizes that any compensation mechanism will have its benefits and its drawbacks, but in seeking a better alternative to the current model, the Commission notes the following with respect to the current compensation mechanism:

46. First, although the major cost item for each provider that varies with the number of VRS minutes is the direct CA cost, if the average number of VRS minutes per user is constant – as the Commission believes it is based on both discussions with providers and examination of historic usage data from the Fund administrator – then the CA cost is also effectively constant per user. That is, if the CA cost/minute is constant and the average minutes/user is also constant, then by definition the product of the two (i.e., $\text{CA cost/minute} * \text{minutes/user} = \text{CA cost/user}$) is also constant when averaged over a period of time and customer base of reasonable size.

47. Second, the Commission notes that there are no other significant cost items that scale on a per minute basis. Indeed, all the other items (e.g., iTRS access technology, installation, customer care, G&A, call center infrastructure, etc.) are either fixed or scale directly or indirectly with the number of users served.

48. Third, because a substantial fraction of the costs of providing VRS are not directly variable with either the number of users or equivalently the number of minutes handled, a providers' cost structure exhibits a scale curve, as illustrated in Figure 1. The minimum efficient scale (V^*) is the point on the scale curve at which the volume of a firm's output is high enough to take substantial advantage of economies of scale so that the average costs are minimized. Put more simply, minimum efficient scale is the point at which the per-unit cost begins to "flatten" as the volume of output increases. The Commission implicitly acknowledged the existence of such a scale curve when adopting a tiered rate methodology by

compensating providers with fewer overall minutes of use at a higher per-minute rate. The Commission notes, however, that the current scheme provides no limit on the duration of support for subscale providers, resulting in an industry structure in which the Fund compensates numerous providers at the lowest volume, highest cost Tier I rates (\$6.24 per minute) and very few firms at the higher volume, lowest cost Tier III rates (\$5.07 per minute).

49. The Commission seeks comment on these observations regarding the current compensation mechanism, in particular on the shape of the scale curve and the point at which minimum efficient scale is reached. The Commission also seeks comment on whether a more reasonable and transparent mechanism for compensating providers would be: (a) based on a per user payment instead of a per minute payment, so that the compensation rate is better aligned with the costs of providing service, and so is easier to determine and more efficient; and (b) based on a predictable transition from the current tiered rates to a single at-scale rate. The Commission discusses (a) in the remainder of this section and (b) in section III.D.

FIGURE 1. ILLUSTRATIVE ECONOMIES OF SCALE IN PROVIDING VRS

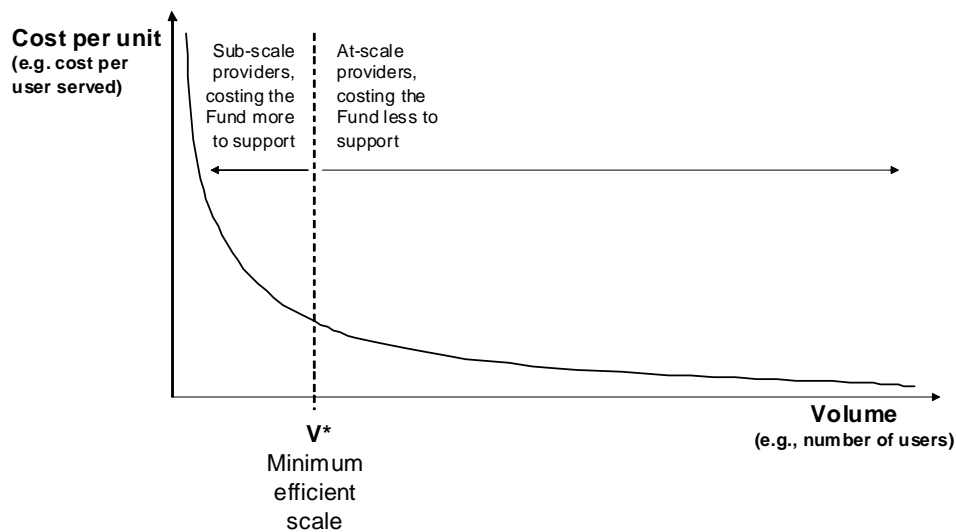


Figure 1

50. The Commission seeks comment on whether a per-user compensation mechanism would better align the compensation methodology with the providers' cost structure, and so be more efficient,

easier to set, and more transparent. In addition, would such a mechanism eliminate providers' incentives to stimulate minutes of use, a common and difficult to detect form of VRS fraud? Would such a mechanism incentivize VRS providers to add new users rather than promote additional minutes of use, thus better aligning the incentives of VRS providers with the goal of ensuring that TRS is available "to the extent possible and in the most efficient manner?" What pitfalls regarding potential fraud would come with a per-user approach? Will shifting provider incentives from generating minutes of use to adding users result in the providers fraudulently adding or reporting users to generate additional compensation? Would it be easier to detect the existence of fraudulent users than fraudulent minutes of use (particularly ex post facto), thus rendering the program easier to monitor and audit? What safeguards could be established to ensure that providers register only individuals that meet the requirements established in the statute and by our regulations? Would a per-user compensation mechanism render the program more transparent by allowing the Commission and the public to better understand the actual number of users of VRS and the cost per user – neither of which are known today despite the size of the program? Would the rate setting process be simplified, more predictable, and more transparent? Would a per-user mechanism, taken in combination with the transition plan described in sections III.D and IV.B.15, provide more certainty to VRS providers and investors, and better governance for the Commission? To provide a solid basis for discussion, a detailed explanation of a per-user compensation mechanism is set forth in Appendix C of document FCC 11-184. The Commission seeks comment on the per-user compensation mechanism described in Appendix C of document FCC 11-184. Would a per-user approach eliminate the need to provide funding for marketing to new-to-category customers?

51. Active Users. While a per-user compensation system would eliminate incentives to manufacture minutes of use, it would create incentives to enroll more users – even those who do not actually utilize the service and therefore do not generate costs for the VRS provider. It may also create incentives to enroll the same users with multiple providers. The Commission seeks comment on how these incentives can be lessened or eliminated. Should providers be compensated only for "active users" – those

registered VRS users that meet a minimum usage requirement? One proposal for defining active users is set forth in Appendix C of document FCC 11-184. The Commission recognizes that if it adopts a minimum usage requirement for VRS users, it will require VRS providers to continue tracking the monthly use of its service by users. The Commission seeks comment on what steps it can take to ensure that VRS providers do not use this information to encourage or entice users to meet the minimum usage requirement for being considered an active user.

52. Enterprise Users. The record indicates that there are an increasing number of individuals who use VRS in the course of their employment, and that those users may have higher average monthly usage than those who do not use VRS in the course of their employment. The Commission recognizes, for example, that a single deaf or hard of hearing individual may use VRS both as an “enterprise user” (i.e., in the course of their employment) and for their own personal use, just as hearing individuals frequently have a phone provided by their employer for use at work, and separate phones for their personal use. The Commission therefore seeks comment on whether a VRS provider should receive additional compensation for “enterprise users” under a per-user compensation system.

53. An option for establishing a system to compensate VRS providers for enterprise users is set forth in Appendix C of document FCC 11-184. The Commission seeks comment on the benefits of establishing a separate enterprise user compensation rate in general, and on the option in Appendix C of document FCC 11-184 in particular. Would the proposal in Appendix C of document FCC 11-184 help reduce barriers to employment for VRS users – as is requested by the Consumer Groups – because VRS providers would have an economic incentive to work with businesses to ensure that the workplace has functionally equivalent communications with which those employees can perform their assigned duties? Would establishing a separate compensation rate for enterprise users help ensure that VRS providers are appropriately compensated for the reasonable costs of providing VRS? To what extent would this option impact the obligations of employers under Title I of the ADA to provide reasonable accommodation to

qualified individuals with disabilities who are employees or applicants for employment, unless to do so would cause undue hardship?

54. The Commission notes that under the existing compensation mechanism, VRS calls made by or to a VRS provider's employee, or the employee of a provider's subcontractor, are a provider business expense and are not eligible for compensation from the TRS Fund on a per-minute basis. The Commission proposes that the same logic applies under a per-user compensation mechanism, and that the cost of calls made to and by employees of VRS providers and their affiliates, or subcontractors of VRS providers and their affiliates should be treated as a cost of providing service which is recovered through the compensation provided for service rendered to non-affiliated VRS users. The Commission therefore seeks comment on what safeguards should be put in place to ensure that VRS providers are not compensated at the enterprise rate for providing service to individuals who work for VRS providers or their affiliates and subcontractors of VRS providers and their affiliates. For example, should employees of VRS providers and their affiliates be required to use a separate 10-digit number at work to denote VRS calls made in the course of their employment? Should the definition of Enterprise VRS Employer include an exclusion of these entities? Should the Enterprise VRS Employers of each Enterprise User be listed in the iTRS database? Should rules associated with call detail records be modified so that Enterprise Users and Enterprise VRS Employers are readily identifiable? How should self-employed VRS users be treated for the purpose of an enterprise rate?

D. Transitioning the Industry Structure To Ensure Economies Of Scale

55. Each of the structural reforms discussed above is worth exploring on its own merit. A major additional benefit of these reforms, if adopted, would be to create an opportunity to transition away from the current inefficient industry structure by giving all providers an opportunity to achieve minimum efficient scale. Specifically, the proposed TRSBPP could make VRS available to a significant pool of new-to-category potential VRS users, and the implementation of iTRS access technology standards could reduce switching transaction costs and make the existing base of VRS users more contestable than is

currently the case (i.e., more easily able to switch from their current provider to a new provider). At the end of a successful transition period, an industry structure could consist of multiple, at-scale providers serving a larger number of users than at present, with each provider being compensated at the same at scale per-user rate set by the Commission (see Figure 2). The ultimate result could be a program in which providers' incentives are aligned with the statute's goals of efficiency, functional equivalence, choice, and maximizing access to VRS, the Fund could be paying an effective rate per user that may better reflect the actual costs of providing VRS than is currently the case, and which could eliminate the current tiered rates, which provide seemingly indefinite support for subscale providers and introduce extra complexity into the management of the program.

FIGURE 2. TRANSITIONING TO MORE EFFICIENT INDUSTRY STRUCTURE

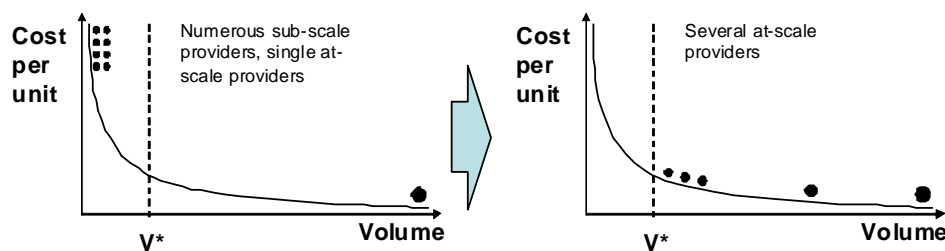


Figure 2

56. The Commission notes, however, that implementation of these reforms, if adopted, would need to be phased in over time, as some of the reforms would need to be conducted sequentially. For example, appropriate VRS access technology standards must be in place before providers can be expected to compete effectively for existing users. Further, providers that are currently subscale will not be able to achieve scale overnight, and some providers may have chosen to adopt capital structures requiring a level of profitability that may not be reflected in a reformed program, for example, because of increased competition or better alignment of rates with the actual costs of providing service. The Commission therefore seeks comment in section IV on how the reforms in this section, if adopted, could be

implemented so as to minimize the risk of inappropriate disruptions that could result from the transition to an at-scale per-user rate.

57. The Commission notes that the transitions discussed in this section will be accompanied by risk. An appropriately implemented structural reform program and transition process potentially would give each provider a real opportunity to achieve minimum efficient scale during the transition period and may result in an end state for the program that is better for VRS users and VRS providers, as well as being more sustainable and efficient for the Fund. If, however, some providers are not able to manage their businesses, gain scale, or support their existing capital structures during a transition period, they will likely have to change their current business plans. This would be a reasonable result, and fully consistent with our settled policy, affirmed by the courts, that our duty is “to protect competition, not competitors.” The Commission seeks to enhance competition in the provision of VRS services because it appears to be an effective way of furthering the goals of section 225 of the Act, but will not act to preserve any particular competitor. The Commission does not believe that any provider has an inherent entitlement to receive compensation from the Fund, and so do not regard as a goal the protection of VRS providers who are high cost and/or uncompetitive.

IV. IMPLEMENTING STRUCTURAL REFORMS

58. In this section, the Commission seeks comment on how to implement the structural reforms discussed in section IV above, to the extent they are adopted. The Commission also seeks comment on whether any additional amendments or new rules are necessary to implement any reforms that are adopted.

A. VRS User Database

59. The Commission seeks comment on whether the Commission should establish a VRS User Database to facilitate four primary functions required to implement the reforms proposed in document FCC 11-184: (i) ensuring that each VRS user has at least one default provider, (ii) allowing for the identification of new-to-category users, (iii) supporting the operation of the TRS Broadband Pilot Program

discussed in section III.A.1 and Appendix A of document FCC 11-184, and (iv) ensuring efficient program administration. A proposal for establishing a VRS User Database is set forth in Appendix D of document FCC 11-184.

B. Rules Governing the VRS program

60. Implementation of the reforms discussed in document FCC 11-184 will require that the rules governing the operation of the VRS program be amended. The Commission seeks comment on the need to modify existing rules or add new rules consistent with the proposals set forth in document FCC 11-184.

1. Restructuring Section 64.604

61. Section 64.604 of the Commission's rules has become somewhat unwieldy since it was adopted in 2000. Initially focused on TRS mandatory minimum standards, the section now includes subsections that govern, inter alia, the administration of the TRS Fund and procedures for making complaints against providers. The Commission seeks comment on whether, regardless of any substantive changes that are made in response to document FCC 11-184, § 64.604 of its rules should be broken into separate sections, each of which addresses a particular regulatory issue. To this end, the Commission seeks comment on whether it should adopt service-specific rules (e.g., VRS, speech-to-speech, captioned telephone relay service), transmission-specific rules (i.e., PSTN-based TRS vs. iTRS), or some other structure.

2. Improving Functional Equivalence in the Workplace

62. The Commission notes that in the employment context, the employer, rather than the employee, generally holds the contractual right to control certain aspects of the communications services and products used on the job. For example, employers generally procure telephone service and telephone numbers for their employees, and it is the employer that pays the phone bill (directly or indirectly), interacts with the providing carrier, and has the contractual right to port or reassign numbers through their carrier partner. This generally is not the case in the context of VRS.

63. As discussed in section III.C and in Appendix C of document FCC 11-184, the Commission seeks comment on whether to provide additional compensation to VRS providers for providing service to VRS users in the course of their employment if a per user compensation mechanism is adopted. The Commission further seeks comment on whether, if such a proposal is adopted, it can be implemented such that VRS service is provided in the workplace in a manner that is functionally equivalent to the way telecommunications services are provided to hearing employees.

64. Specifically, the Commission seeks comment on whether enterprises that have deaf employees could be treated as “VRS Users” for the purposes of our VRS program, except to the extent necessary to ensure that VRS providers appropriately receive and process calls, including emergency calls, from individual employees. Thus, for example, a business that contracts with a VRS provider to make VRS available to all of its deaf employees would be considered a “user” as that term is used in connection with the registration and number portability obligations set forth in § 64.611 of the Commission’s rules, but each individual employee would be considered a user for the purposes of the emergency access obligations set forth in § 64.605 of its rules. The Commission seeks comment on what changes to its rules, if any, would be necessary to implement such a proposal, particularly in the context of the more general proposals and requests for comment set forth in the remainder of this section IV.B.

3. Removing the Need for Free Dial Around

65. Under our existing interoperability rules, Internet-based TRS users must be able to “dial around” to competing providers. Specifically, § 64.611(a)(2) of the Commission’s rules obligates default VRS providers, to “route and deliver all of that user’s inbound and outbound calls unless the user chooses to place a call with, or receives a call from, an alternate provider.” If providers are compensated on a per-user basis, however, they will not be compensated for calls placed through them by another VRS provider’s registered user. If VRS users were permitted to dial-around their default provider under a per-user compensation mechanism, providers would have a perverse incentive to encourage their VRS users to

dial around so as to avoid incurring the costs of processing their VRS calls. Dial around may also encourage VRS providers that seek to provide less than full service to free ride on other providers.

66. The Commission recognizes, however, that some consumers might value the ability to dial around to different providers for various reasons. For example, the availability of dial around could facilitate competition among providers to answer calls more quickly. In that case, some consumers might value the dial around feature because it allows them to direct their call to an alternate provider that they believe might be even more responsive than their default provider in particular instances.

67. Given these competing considerations, the Commission seeks comment on whether to modify or eliminate the dial around requirement if the Commission adopts a per-user compensation mechanism. Would it be appropriate to mandate dial around functionality only for the purpose of accessing emergency services? Could providers continue to offer dial around capability on a commercial basis (e.g., on a charge per call basis)?

68. The Commission notes that eliminating the dial around requirement for VRS will make the way VRS service is provided more consistent with the way that most communications services are provided today. For example, a subscriber to an interconnected VoIP service cannot make free calls via a second interconnected VoIP service to which she does not subscribe. However, the Commission recognizes that the availability of dial around currently serves as an incentive for VRS providers to meet or exceed “speed of answer” requirements because a customer who does not get their call answered quickly enough can redirect the call – and the per-minute compensation associated with the call – to another VRS provider. The Commission therefore seeks comment below on whether we need to revise this standard and whether there are other modifications that must be made to the Commission’s mandatory minimum standards so that they better reflect the actual minimum standards that are reasonable for VRS users to expect.

69. The Commission seeks comment on whether it should require VRS providers to accept 911 calls from users who are not their registered users should the proposal to require VRS users to sign a

contract with a specific provider be adopted. The Commission has anecdotal evidence that some VRS providers require users to register with them before completing the user's 911 call. Such a requirement would be similar to the requirement that wireless providers complete 911 calls even if the caller's contract for service has lapsed.

4. One Free Provider Per VRS User

70. Under the existing per-minute compensation mechanism, registering with multiple VRS providers is not necessarily problematic from an efficiency perspective, as the total reimbursements paid from the TRS Fund for each VRS user's minutes of use will be roughly the same, regardless of which providers process the calls. As described in Appendix C of document FCC 11-184, however, a per-user rate should cover an at scale provider's reasonable, annual costs to provide VRS service. Thus, under a per-user mechanism, allowing VRS users to register with multiple providers could result in significant increases in reimbursements paid from the Fund. Allowing individuals to register with multiple providers also makes it difficult to assess how many VRS users there are, and what the usage patterns of VRS users are, as well as facilitating fraud and/or abuse of the Fund by allowing providers to obtain compensation from the Fund without necessarily providing all aspects of service that might be expected from a committed, at scale VRS provider. The Commission seeks comment on limiting VRS users to registering with a single VRS provider for the purposes of making and receiving calls that are reimbursable from the Fund. Would this be an effective means of ensuring that VRS is provided in an efficient manner, while at the same time making VRS available to all potential users?

71. If so, what mechanisms should a provider use to ensure that a user that it registers is not already registered with another provider? Would the existence of the VRS User Database (VRSURD) be sufficient to ensure that multiple registrations do not occur? Are there specific requirements that should be placed on users that choose to register to use this service? What type of information should providers obtain to ensure that an individual is not already registered with another provider? What method or methods should a provider use to verify or validate the information provided by a potential VRS user?

Should the Commission establish a standard certification form? Should providers establish a validation or verification process? Should the Commission establish guidelines or detailed rules governing what constitutes an acceptable verification or validation process? Should there be only one acceptable process, or should providers be entitled to use one of several methods to validate or verify information provided to ensure that a VRS user is registered with only one VRS provider? What information will be required beyond that which providers generally collect today?

72. The Commission seeks comment on the impact that a “one free provider per VRS user” rule would have on consumers. Some VRS users have recommended that “consumers not be restricted to one service provider for both fixed and mobile services,” arguing that “consumers may have different service providers preferences depending on the type of service and that consumers should be able to choose between different providers.” Were the Commission to adopt a rule allowing dual registration (i.e., for fixed and mobile services) would we be able to achieve the efficiencies sought after in this proceeding? How would this approach be implemented? The Commission notes that data provided by some providers suggests that when a VRS user utilizes both fixed and mobile services, that user’s mobile minutes tend to replace, rather than supplement, that user’s fixed minutes. If this is the case, would VRS providers be incented to offer high quality service on multiple platforms (e.g., mobile and fixed) to attract more customers? In this manner could “a one free provider per VRS user” rule encourage competition and innovation between VRS providers, especially given the lack of price competition? Could providers offer users a single ten digit number that would allow inbound calls to be received on all platforms that a user possesses? Could providers offer additional paid services (*i.e.*, services that are not needed to achieve functional equivalency) on a commercial basis, as some currently do for remote interpreting services? Would “one free provider per VRS user” be consistent with the mandate of section 225 of the Act?

73. Consistent with section IV.B.1 and Appendix C of document FCC 11-184, should an Enterprise VRS User’s Enterprise VRS Employer be considered the “user” for the purposes of this restriction?

5. Contracts

74. The Commission seeks comment on whether to allow VRS providers to require VRS users who are either (i) new-to-category VRS users (i.e., have not previously signed up for VRS) or (ii) switching from another VRS provider to enter into a service contract starting one year after the adoption of a per-user compensation mechanism. The Commission also seeks comment on whether VRS providers should be allowed to require Enterprise VRS Employers to enter into a service contract starting one year after the adoption of a per-user compensation mechanism. Some providers use service contracts in other communications markets, and the Commission seeks comment on the possible harms and benefits of allowing them in the context of a per-user compensation mechanism in the VRS industry. For example, are there costs attributable to VRS user registration, start-up, or connection such that service contracts could make the program more cost efficient and administrable by restricting VRS users and Enterprise VRS Employers' ability to change their default providers with great frequency? Would explicitly allowing contracts lessen the incentive for providers to frustrate interoperability and portability by allowing providers to recoup the costs of providing iTRS access technology, customer setup, enrollment, and other upfront costs? Would service contracts increase the stability of providers' revenues and reduce the amount of customer churn, lessening the incentives of providers to spend excessive funds on marketing and winback activities? Would limiting VRS providers to requiring contracts from new-to-category, switching VRS users, and Enterprise VRS Employers for some period of time help prevent VRS providers from contractually locking in their existing user bases, thus ensuring that the existing installed base of users is contestable (i.e., users can easily switch from one provider to another) during the transition period described in section IV.C? What harms may arise due to service contracts? For example, would a VRS providers have an incentive to provide subpar service to save costs and increase profits once it gains a new subscribers because they could be locked in for a period of time? Would revising our speed of answer and other mandatory minimum standards be sufficient to offset this possible harm? Should the Commission

require VRS providers to offer a trial period? If so, what period of time for a trial period would be appropriate?

75. If the Commission was to adopt a per-user compensation mechanism and allow VRS providers to require service contracts, what would be an appropriate service term? Is a one-year term appropriate, or should terms be longer or shorter? What protections would need to be put in place for consumers? Should consumers be permitted to be released from a contract if the provider breaches its obligations to provide service in accordance with the Commission's TRS mandatory minimum standards? Conversely, if consumers are being provided free or discounted VRS access technology as part of their service contract, should providers be allowed to impose an early termination fee (ETF) if consumers wish to exit the contract before its expiration? Are there other costs that providers intend to recover over the course of a contract that might justify the use of an ETF? Would such fees be consistent with the requirements of section 225 of the Act, including that TRS users pay rates no greater than the rates paid for functionally equivalent voice services? If so, should a VRS provider be allowed to "buy out" a VRS user's or Enterprise VRS Employer's ETF with a competing provider in order to allow that user to switch without incurring a pecuniary transaction cost? Are there other terms that should be permitted or required that would address up-front costs? Likewise, are there other contract terms that should be required for or prohibited in such contracts?

6. Mandatory Minimum Standards (Performance Rules)

76. In view of the purpose of TRS, Congress specifically mandated in section 225 of the Act that relay services offer access to the telephone system that is "functionally equivalent" to voice telephone services. The "functional equivalence" standard serves as a benchmark for determining the services and features TRS providers must offer to consumers, and is reflected in the TRS mandatory minimum standards contained in the Commission's rules. TRS mandatory minimum standards are defined in the Commission's Part 64.604 rules in terms of "operational standards," "technical standards" and "functional

standards.” These standards ensure that TRS users have the ability to access the telephone system in a manner that approximates, as closely as possible, the experience of a voice telephone user.

a. Operational Standards

77. The Commission seeks comment on whether the options set forth in document FCC 11-184 necessitate modifications to its TRS operational standards, or the establishment of separate operational standards for VRS. How would the adoption of a new-to-category incentive payment impact our rules governing data collection from TRS providers and information filed with the Administrator? Would the data for registered new VRS users be quantified by the certified VRS provider and submitted or quantified by the TRS Fund Administrator? If a per-user compensation system is adopted how and by whom would the data for “Active Users” be quantified? Do provider incentives under a per-user compensation system change such that the Commission will need to take extra precautions to ensure that providers will not be motivated to discourage high volume users from contracting with them or from making VRS calls? How can the Commission ward off such incentives, to ensure the continued provision of high quality service to all users, regardless of the quantity of calls they make? Should specific training requirements or qualifications be established for VRS CAs different from or beyond those general requirements set forth in § 64.604(a)(1) of the Commission’s rules to ensure that providers maintain a certain level of CA qualifications for all calls handled? If specific qualifications are imposed on VRS CAs, what affect would this have on the current pool of VRS CAs who may or may not meet those qualifications? What affect, if any, would different qualifications have on the ability of VRS providers to comply with the speed of answer requirement? Is there any need to modify the confidentiality and conversation content standards set forth in § 64.604(a)(2) of the Commission’s rules to protect consumers from compromises in call quality? Should obligations with respect to the types of calls VRS providers must process be modified if a per-user compensation mechanism is adopted? Are there other operational standards that should be adopted or modified to ensure high quality VRS for all users?

b. Technical Standards

78. As discussed in section III.B.2 and Appendix B of document FCC 11-184, the Commission seeks comment on establishing detailed iTRS access technology standards. The Commission seeks comment on whether those proposals, or the other proposals set forth in document FCC 11-184, necessitate modifications to our TRS technical standards, or the establishment of separate technical standards for VRS. For example, as discussed in section IV.B.3 above, should the speed of answer requirements set forth in § 64.604(b)(2) of the Commission's rules be modified? If adopted, would standards consistent with those set forth in Appendix D of document FCC 11-184 render the need for rules on equal access to interexchange carriers and caller ID treatment unnecessary?

c. Functional Standards

79. The Commission seeks comment on whether the proposals set forth in document FCC 11-184, if adopted, necessitate modifications to its TRS functional standards, or the establishment of separate functional standards for VRS. For example, should VRS providers maintain the same types of consumer complaint logs as other providers of TRS?

80. The Commission's TRS functional standards rules contain a number of subsections that govern unrelated aspects of the TRS program. Consistent with section IV.B.1 above, the Commission seeks comment on restructuring our rules into separate logical sections and, in the following paragraphs, seeks comment on the substance of these rules.

7. Public Access to Information

81. In the 2010 VRS Reform NOI, the Commission noted that it has been difficult to assess the effectiveness of funded outreach programs. Outreach to the hearing community continues to be necessary; we are aware, for example, that some businesses refuse to accept relay calls, perhaps due to a failure to understand the nature of TRS. The Commission does not, however, believe that its existing practice of relying on VRS providers to conduct effective outreach has been effective. The Commission seeks

comment on whether the Commission should establish an independent outreach program to educate the general public about TRS, including VRS. Should such a program be conducted specifically by the FCC, a specialized contractor, consumer organizations, state and local governments, or some other entity or combination of entities? The Commission notes that it recently authorized the expenditure of \$500,000 annually from the Fund to allow entities that have significant experience with and expertise in working with the deaf-blind community to conduct outreach to deaf-blind individuals to make them aware of the availability of specialized CPE to low-income individuals who are deaf-blind. Would this effort serve as a model for VRS?

8. Jurisdictional Separation of Costs

82. The Commission does not propose to modify our rules that govern jurisdictional separation of costs or cost recovery, but nonetheless seek comment on whether modifications to these rules are necessary.

9. Telecommunications Relay Services Fund

a. Contributions and Contribution Computations

83. If the Commission should choose to adopt any of the options set forth in document FCC 11-184, including implementing a TRSBPP or reimbursing expenses for iTRS access technology through the TRS Fund, what modifications, if any, should be made to its rules governing contributions and contribution computations?

b. Data Collection

84. If the Commission should choose to adopt any of the options set forth in document FCC 11-184, what modifications, if any, should be made to its rules governing data collection from TRS providers and information filed with the Administrator? For example, is the general grant of authority to the Administrator to request information reasonably “necessary to determine TRS Fund revenue requirements

and payments” sufficient? Should the Commission explicitly require providers to submit additional detailed information, such as information regarding their financial status (e.g., a cash flow to debt ratio)?

c. Payments to TRS Providers

85. If the Commission should choose to adopt any of the options set forth in document FCC 11-184, including adoption of a per-user compensation mechanism, implementing a TRSBPP or reimbursing expenses for iTRS access technology through the TRS Fund, what modifications, if any, should be made to its rules governing payments to TRS providers, eligibility for payments from the TRS Fund, and notice of participation in the TRS Fund?

**d. Administrator Reporting, Monitoring, and Filing Requirements;
Performance Review; Treatment of TRS Customer Information**

86. Many of the possible changes set forth in this item contemplate a role for the Administrator. If the Commission should choose to adopt any of the options set forth in document FCC 11-184, what modifications, if any, should be made to its rules governing the obligations of the Administrator, Commission review of the Administrator’s performance, and treatment of TRS customer information?

e. Enforcement

87. If the Commission should choose to adopt any of the options set forth in document FCC 11-184, what modifications to its rules, if any, are necessary to ensure that they are enforceable?

10. Consumer Complaints

88. If the Commission should choose to adopt any of the options set forth in document FCC 11-184, what modifications, if any, should be made to its informal and formal complaint procedures?

11. Registration Process

89. The Commission seeks comment on whether the options set forth in document FCC 11-184 necessitate modifications to its iTRS registration rules. In particular, the Commission seeks comment on

what modifications, if any, would be necessary to implement the proposals regarding VRS in the workplace discussed in section IV.B.2 above. What additional verification standards would be needed?

12. Emergency Calling Requirements

90. The Commission seeks comment on whether the options set forth in document FCC 11-184 necessitate modifications to its emergency calling requirements. In particular, the Commission seeks comment on what changes, if any, are necessary to accommodate the elimination of dial around discussed in section IV.B.3, above, a one provider per-user system as discussed in section IV.B.4 above, or the treatment of VRS in the workplace discussed in section IV.B.2 above.

13. Preventing Discrimination

91. Section 225 of the Act requires the Commission to ensure that relay services “are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.” Section 225(d)(1) of the Act charges the Commission with the obligation of adopting regulations that, among other things, “prohibit relay operators from failing to fulfill the obligations of common carriers by refusing calls or limiting the length of calls that use telecommunications relay services.” Pursuant to these statutorily mandated responsibilities and other Commission requirements, the Commission has issued a number of orders finding that specific types and forms of discrimination and fraudulent practices are unlawful and prohibited by the Act and our rules. As discussed in Section III.E above, however, some VRS providers’ still have engaged in unlawful practices.

92. Under a per-user compensation mechanism, the Commission recognizes that VRS providers may continue to engage in unlawful practices. Under the per-minute compensation reimbursement method, these unlawful practices have generally occurred through discrimination (e.g., favoring high-volume users over low-volume users), often resulting in waste, fraud, and abuse of the TRS Fund (e.g., seeking payment for non-compensatory minutes through discriminatory practices and outright fraud). By way of example, anecdotal evidence suggests that the per-minute compensation scheme provides

unintended incentives to VRS providers to give call priority to high-volume users by placing them first in line for connections and to favor such users by providing them with newer and better VRS access technology before low-volume users. Under a per-user compensation framework, providers likewise may have the incentive to discriminate against high-volume users in favor of low-volume users because providers would be compensated at the same level for all users, regardless of their call volume. Similarly, some providers may utilize a variety of practices geared toward ensuring that low-volume users make the minimum number of calls required to qualify as an “active user” for purposes of compensation from the Fund. Both call discrimination and practices aimed at acquiring and maintaining low-volume “active users” that would not otherwise utilize VRS could result in waste, fraud, and abuse of the TRS Fund and threaten the long-term sustainability of the VRS program.

93. It has become increasingly apparent that our “piece meal” approach to detect and outlaw discriminatory and fraudulent practices has not always worked. As the Commission noted in Section III.E, in many cases, “when directed not to engage in certain calling activities,” for example, “some providers have merely shifted to other arrangements that are not specifically prohibited and have engaged in attempts to make non-compliant calls in ways that have made them more difficult to detect.” To the extent that VRS providers discriminate in the manner in which they handle calls (e.g., the type of call or caller), except as provided for in the Commission’s rules, they create inefficiencies in the VRS call processing system. Likewise, when a VRS provider engages in fraudulent practices by encouraging or causing VRS calls to be made that would not otherwise be made, or VRS users to be enrolled that would not otherwise be enrolled, except for a provider’s desire to drive up its compensation from the TRS Fund, the VRS system is made inefficient. These types of unlawful practices artificially tie up CAs and limit the ability of legitimate callers to use VRS contrary to section 225 of the Act.

94. Further, unlawful VRS provider practices not only allow dishonest providers to obtain a competitive advantage over providers that operate in compliance with the Act and the Commission’s rules, but undermine the key goals of Congress in enacting section 225 of the Act. VRS provider practices

that result in waste, fraud, and abuse threaten the sustainability of the TRS Fund and are directly linked to the efficiency and effectiveness of the TRS Fund support mechanisms upon which VRS providers rely for compensation. As the Commission has previously found, fraudulent diversion of funds robs the TRS Fund for illicit gain and “abuses a highly valued Federal program that, for the past twenty years, has been critical to ensuring that people with hearing and speech disabilities have the same opportunities to communicate over distances – with family, friends, colleagues, and others – as everyone else.” Moreover, such practices unlawfully shift improper costs to consumers of other telecommunications services, including local and long distance voice subscribers, interconnected VoIP, and others.

95. Accordingly, in furtherance of the Commission’s express authority under section 225(b)(1) and section 225(d)(1)(E) of the Act and the goals underlying the provision and regulation of TRS, it proposes to adopt regulations prohibiting VRS providers from engaging in practices that result in waste, fraud, and abuse of the TRS Fund, including discriminatory practices (e.g., screening for or refusing to register individuals who are likely to be high volume users, discrimination based on length of calls or call volume, and favoring some users with free or low-cost iTRS access technology based on call volume), and seek comment on this proposal. The Commission concludes that such regulations should apply to all VRS providers as reasonably ancillary to the effective performance of its responsibilities under the Act, including its mandate to ensure that relay services “are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.” The Commission seeks comment on this conclusion, and generally on the Commission’s authority to adopt such regulations as proposed.

14. Preventing Slamming

96. As discussed above and in the VRS Call Practices R&O and Certification FNPRM, the current VRS per-minute compensation structure has been vulnerable to unforeseen and difficult-to-detect waste, fraud, and abuse. The Commission recognizes that a per-user compensation structure could lead to other abuses by providers in order to increase the number of their active users and generate revenue. For

example, under a per-user compensation scheme, VRS providers would have an incentive to engage in “slamming” and misleading marketing practices because reimbursement would be based on the number of registered users rather than on the total minutes of use.

97. The Commission has previously sought comment on the need for VRS specific rules against slamming to protect relay consumers against unauthorized default provider changes. The Commission incorporates by reference comments previously filed on this issue and seek to refresh the record on this issue. To protect VRS users from unwanted changes in their default provider, the Commission seeks further comment on whether it should adopt rules governing a user’s change in VRS providers. The Commission seeks comment on the types of safeguards that should be put in place to protect users from unauthorized changes in their VRS default provider. The Commission also seeks comment on what type(s) of authorization providers must obtain prior to switching a subscriber's default provider and how verification of any such authorization should be obtained and maintained by the receiving provider. Additionally, the Commission seeks comment on whether and how providers may use information obtained when receiving notification of a user’s service change to another provider, whether for marketing, win-back, or other purposes.

15. Audits.

98. Section 64.604(c)(5)(iii)(C) of the Commission’s rules states that the TRS Fund Administrator “and the Commission shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments.” The Commission seeks comment on whether the TRS Fund Administrator or the Commission requires additional authority to conduct audits under the rules its propose in document FCC 11-184.

C. Implementing the Transition from Per-Minute to Per-User Compensation

99. As discussed in section III.D, implementation of the reforms discussed in document FCC 11-184, if adopted, would need to be phased in according to a well-developed and transparent plan. In this section, the Commission seeks comment on how to conduct such a transition.

1. Phases

100. A transition from a per-minute to a per-user compensation mechanism can be conceptualized as consisting of three phases. The first phase would be the “implementation phase,” during which all conditions necessary to prepare for the switch from per-minute to per-user compensation would be met, including measures to make the existing base of customers more contestable and bring new VRS users into the program. The implementation phase would begin immediately after the adoption of a final order in this proceeding, and terminate with the initiation of per-user compensation at an initial per user rate. The second phase would be the “growth phase” during which smaller providers would have the opportunity to achieve scale by adding users and all providers would transition from their initial per-user rate set during the implementation phase to a unitary at-scale “base rate” discussed in Appendix C of document FCC 11-184 (if those rates are different). The third and final phase would be the “scale phase,” during which all providers are compensated at a per-user compensation mechanism selected by the Commission to reflect the cost of providing VRS service at scale. The Commission seeks comment on whether these three phases are the appropriate logical structure for a transition from per-minute to per-user compensation. The Commission also seeks comment, in the following sections, on how each of the phases of a transition should be conducted.

a. Implementation Phase

101. As described above, the “implementation phase” would be the time period during which all conditions necessary to prepare for the switch from per-minute to per-user compensation would be met. The implementation phase would begin upon the adoption of a final order in this proceeding, and terminate

with the initiation of per-user compensation. The Commission seeks comment in this section on how an implementation phase should be conducted.

(i) VRS Provider Compensation During Implementation Phase

102. The Commission seeks comment on how VRS providers should be compensated during the implementation phase. As discussed in greater detail in the following paragraphs, the Commission and the Administrator will need to gather data from VRS providers before an initial per-user rate can be established. The Commission therefore seeks comment on what the per-minute rate should be during the implementation phase. The Commission stated in the 2011 VRS Rate Order that the interim rates currently in effect would “be in effect on an interim basis until the Commission completes its examination of VRS rates and compensation as part of the 2010 VRS NOI proceeding” because “extending the current interim rates and compensation structure temporarily provided the best means to ensure stability and certainty for VRS while the Commission continues to evaluate the issues and the substantial record developed in response to the 2010 VRS NOI proceeding.” Should the Commission extend the current interim rates during the implementation period to provide continued certainty during the implementation phase?

(ii) Actions to be conducted during the implementation phase

103. The Commission seeks comment on what actions need to be taken during the implementation phase and the timing of such actions. If the Commission adopts a per-user mechanism, it propose to require that each of the following occur during the implementation phase:

- The VRSURD be established and operational;
- The TRSBPP be established and operational;
- iTRS access technology standards be adopted and implemented;
- “One provider per user” be implemented (i.e., VRS users must select a single VRS provider); and

- The initial per-user rate (or rates) be calculated and published.

The Commission describes in greater detail and seeks comment on these conditions in the following paragraphs.

104. VRSURD. As discussed in section IV.A and Appendix D of document FCC 11-184, a VRSURD would be essential to (i) ensure that each VRS user has at least one default provider, (ii) allow for the identification of new-to-category users, (iii) support the operation of the TRS Broadband Pilot Program discussed in section III.A.1 and Appendix A of document FCC 11-184, and (iv) ensure efficient program administration. In order to establish a VRSURD, the neutral database administrator must be selected, construct the database, work with industry to populate the database, test the functionality of the database, and be prepared to support the functionality described in Appendix D of document FCC 11-184 before the Commission can effectively implement a “one provider per user” rule. The data that will be submitted to the VRSURD also will be critical to establishing a per-user rate.

105. The Commission notes that the Commission completed the comparable task of establishing the iTRS numbering directory in six months. The Commission seeks comment on whether this is a reasonable timeframe for the establishment of the VRSURD. Are there issues that would make the process of establishing a VRSURD take more – or less – time than was needed to establish the iTRS numbering directory? If so, what are those issues, and what impact would they have on the timing?

106. TRSBPP. As discussed in section III.A.1 and Appendix A of document FCC 11-184, the Commission proposes, to the extent there is unaddressed demand for VRS, to promote residential broadband adoption via a pilot program to provide discounted broadband Internet access to low-income Americans who are deaf, hard of hearing, deaf-blind, or speech disabled. The Commission notes that implementation of a TRSBPP would require that a VRSURD be established and that the Administrator, VRS providers, and broadband providers all take steps to establish and implement appropriate procedures. The Commission seeks comment on how much time should be allowed for the TRSBPP to be implemented. The Commission also seeks comment on whether it would be necessary to have the

TRSBPP operational before the end of the implementation period, or whether that program, to the extent adopted, could be implemented at a later time.

107. iTRS access technology standards. Appropriate VRS access technology standards must be in place before VRS providers can be expected to compete effectively for VRS users. The Commission seeks comment on how much time the Commission should allocate for each of the actions described in Appendix D of document FCC 11-184, including the adoption of iTRS access technology standards, the time necessary for any standards transition phases for the installed base of VRS access technology and/or for new VRS users, the establishment of a conformance and interoperability testing regime, and the establishment of an ongoing standards governance process. To what extent must the steps described in Appendix D of document FCC 11-184 be completed during an implementation phase? Could certain steps be completed during the growth phase?

108. One provider per user. As discussed in section IV.B.4, users must select a single default provider under a per-user compensation system. At what point during the implementation phase would it be appropriate to implement such a requirement? How long should VRS users be given to make a provider selection? What should happen if VRS users fail to select a default provider during the time allotted? How long before the end of the implementation period should the selection period end to ensure that the Commission and the Administrator have accurate counts of each VRS providers' user base on which to rely when establishing per-user rates?

109. Calculation of initial per-user rate(s). As discussed above, the Commission contemplates that the implementation phase would terminate with the initiation of per-user compensation. The Commission seeks comment on how the initial per-user compensation rate for each VRS provider should be calculated. Should all VRS providers be compensated at the same initial rate, or is it more appropriate to set a separate initial per-user rate for each provider? Should providers immediately be paid at the "target base rates" established as discussed in Appendix C of document FCC 11-184? Should each VRS provider be compensated at an initial per-user rate that keeps them revenue neutral (i.e., each provider

would continue to receive the same amount of revenue immediately before and immediately after the switch to a per user rate)?

110. To the extent initial revenue neutrality is a goal, would the first year of the implementation phase be the appropriate reference period for determining the appropriate revenue level, or would some other time period be more appropriate? How would the appropriate level be established? When should a VRS provider's number of users be determined? Would it be appropriate to use the VRS user count immediately after VRS users are required to select a single default provider, or should a "settling in" period be allowed to pass first to allow for customers to switch providers? How long should such a settling in period be? The Commission notes that to the extent that providers are kept revenue neutral between the end of the per minute mechanism and the start of the per user mechanism, they may have an incentive to depress their initial user count to inflate the corresponding initial per user rate. The Commission seeks comment on ways to prevent this.

111. What other factors should be taken into account when establishing an initial per-user rate? For example, should there be a maximum per-user compensation rate established so as to ensure that VRS providers with very few users at the end of the implementation period are not paid an "excessive" per-user rate? Should a VRS provider's capital structure be taken into account when establishing their initial per-user rate? To what extent should the Commission be concerned that an initial per-user rate might increase the likelihood of a VRS provider being unable to sustain its current capital structure? How disruptive would such financial restructuring be to the service experienced by VRS users? How, if at all, would such a proceeding affect the TRS Fund in the long term?

112. Other possible conditions. The Commission seeks comment on what, if any, additional conditions should be met during the implementation phase. For example, should the new-to-category incentive payment, if adopted, be available during the entirety of the implementation phase, or should that incentive payment be made available only after the TRSBPP has been implemented? This would help to

ensure that a new-to-category incentive is not paid for registering individuals who already are aware of the VRS program but did not register solely due to the cost of a broadband Internet connection.

113. Duration. Should the total duration of the implementation period be limited in time, or only by the achievement of the necessary conditions? If limiting the total duration of the implementation period is appropriate, what should the deadline be? Should there be interim deadlines established for meeting any of the conditions set pursuant to the discussion in the paragraphs above? What should those deadlines be? For the sake of clarity, commenters responding to these questions should reference the date that a final order is adopted in this proceeding (e.g., “the deadline for such action should be one year from the adoption of a final order”).

114. What should be the result if any deadlines established pursuant to the discussion in the preceding paragraph are not met? Would it be appropriate to implement one of the default alternatives discussed in section V?

b. Growth Phase

115. The “growth phase” of a transition from per-minute to per-user compensation would be that time during which small providers would have the opportunity to achieve scale by adding users and transition from their initial per-user rate to the unitary, at-scale “target base rate” discussed in Appendix C of document FCC 11-184 (if those rates are different). The growth phase would terminate once all VRS providers are being compensated at the target base rate.

116. The growth phase would be defined primarily by three factors: the initial per-user rate for each VRS provider, the target base rate, and the transition from the initial per-user rate(s) to the target base rate. As we seek comment above on how to establish the initial per-user rate(s) and below on setting the target base rate, we focus our inquiry in this section on the transition path.

117. As illustrated in Figure 3 below, two questions must be answered once initial per-user rates and the target base rate are established. First, how long should the growth period be? That is, how

much time should elapse between t_{initial} and t_{final} ? Second, what should the per-user rate be during the growth period? Or, put another way, what should be the shape of the rate curve between t_{initial} and t_{final} ? The Commission seeks comment on these questions.

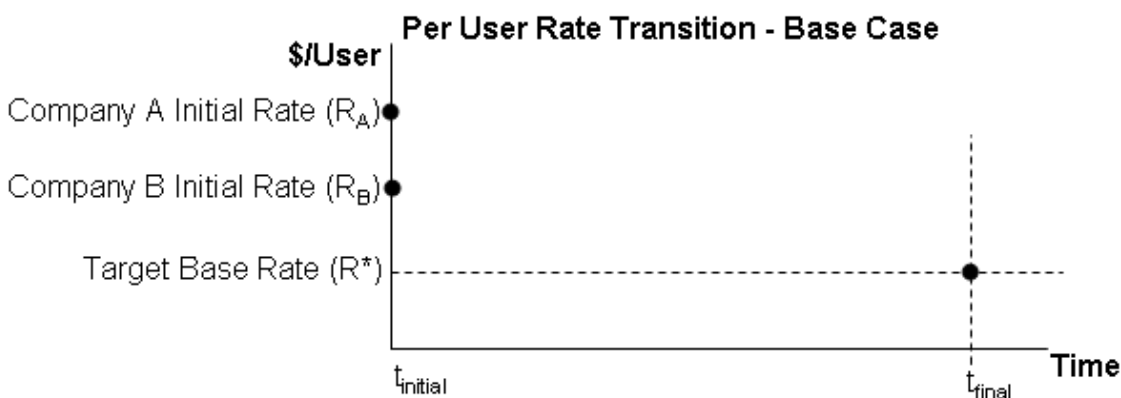


Figure 3

118. Duration of growth period. The Commission seeks comment on the appropriate duration of the growth period. How should the Commission balance the need to give providers a fair chance to adapt their cost structures to the new reimbursement scheme (e.g., by attaining scale economies and/or adjusting their financing commitments) against the knowledge that every year of paying rates above the target base rate, R^* , could be considered an unnecessary expenditure of Fund resources? What other factors should be taken into account when determining the appropriate duration of the growth period?

119. Shape of the rate curve. The Commission seeks comment on the appropriate per-user rate over the course of the growth period. One approach, illustrated in Figure 4, would be to simply compensate each VRS provider at the initial per-user rate established during the transition period. As discussed above, such rates could be unique to each provider (e.g., R_A and R_B as shown in Figure 4) or common to all providers (e.g., the target base rate, R^* , or another unitary rate).

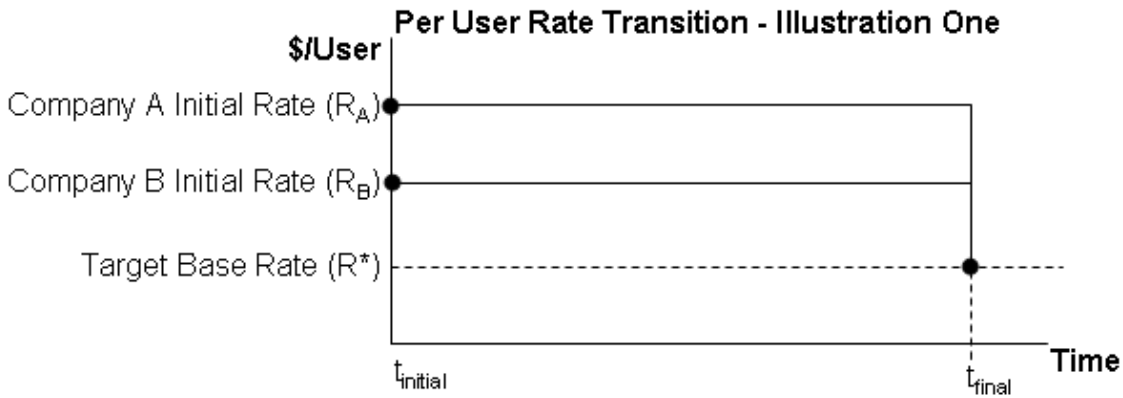


Figure 4

120. An alternative approach, illustrated in Figure 5, would be to reduce each provider's per-user compensation rate during the course of the growth period until the target base rate is reached. Figure 5 illustrates a simple version of this approach, with each VRS provider's per-user compensation being reduced to the target base rate in two steps, the first at t_1 and the second at t_{final} .

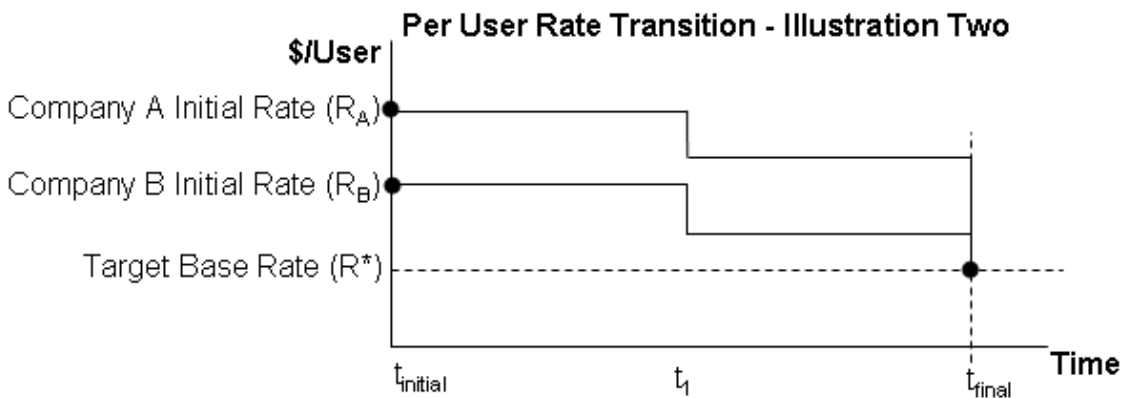


Figure 5

121. Note that, regardless of the shape of the rate curve, providers will benefit from the certainty of a pre-determined trajectory during the duration of the growth period, which will allow them to make operational and financing plans with minimal regulatory risk. The Commission seeks comment on the rates that should be paid during the growth period. Should there be a single rate during the growth period, or should the rate be reduced in steps over time? If the rate should be reduced, what should the

duration of each step be, and how should the amount of the reduction be calculated? Commenters should provide detailed explanations of and justifications for their recommendations, to include any financial data necessary to support the use of a particular rate curve. If the Commission transition to a per user rate following document FCC 11-184, it expects to set t_{initial} , t_{final} , R^* , and the trajectory as soon as possible as part of the initial rate setting process to provide multi-year certainty for providers. Further discussion of the target base rate can be found in Appendix C of document FCC 11-184.

122. New entrants. To the extent newly certified VRS providers are authorized to be compensated by the Fund and begin to provide service during the transition period (“new entrants”), how should those entrants be compensated? Should they be compensated at the target base rate, the weighted average rate being paid to existing providers at the time of entry, or some other rate?

c. Scale Phase

123. The third and final phase of a transition from a per-minute to a per-user compensation mechanism would be the “scale phase,” during which all providers are compensated at the same per user rate selected by the Commission. Thus, the scale phase would be the “steady state” that exists after compensation has transitioned to a per-user mechanism and all providers are being compensated at the efficient target base rate. The Commission seeks comment on the appropriate way to determine the annual per-user compensation rate during the scale phase.

124. If the Commission adopts a per-user mechanism, it proposes to adopt for the scale phase a price cap mechanism consistent with that adopted by the Commission for IP Relay in the 2007 Rate Order, 73 FR 3197. January 18, 2008. Under that plan, the compensation rate is set for a period of three years, “during which time the rates would be adjusted upward annually for inflation (according to a pre-defined inflation factor) and downward to account for efficiency gains (according to a factor also set at the outset of price caps).”

125. Specifically, the Commission proposes to adopt the general model established for IP Relay in the 2007 Rate Order, with the exception of how the base rate is calculated. As described in the 2007 Rate Order:

As a general matter, the price cap plan applies three factors to a base rate – an Inflation Factor, an Efficiency (or “X”) Factor, and Exogenous Costs. The basic formula takes a base rate and multiplies it by a factor that reflects an increase due to inflation, offset by a decrease due to efficiencies. The Inflation Factor will be the Gross Domestic Product – Price Index (GDP-PI). The Efficiency Factor will be set as a figure equal to the Inflation Factor, less 0.5 percent (or 0.005) to account for productivity gains. As a result the rate for a particular year will equal the rate for the previous year, reduced by 0.5 percent (i.e., $\text{Rate}_{\text{Year } Y} = \text{Rate}_{\text{Year } Y-1} (1 - 0.005)$). Reducing the rate by this amount will encourage VRS providers to become more efficient in providing the service.

The Commission will also adjust the rate, as necessary, due to exogenous costs, i.e., those costs beyond the control of the IP Relay providers that are not reflected in the inflation adjustment. Therefore, to the extent the Commission adopts new service requirements, it will determine whether the costs of meeting the new requirements warrant an upward exogenous adjustment.

126. A number of providers asserted at that time that a price cap approach would have at least three benefits: (1) it would create incentives for providers to lower costs; (2) the three year time frame gives providers “predictability about revenue to allocate money to programs that will reduce costs in the future;” and (3) it simplifies the rate setting process, saving time and money. One provider also emphasized that under price caps, providers would focus on increasing efficiencies to accommodate decreasing rates. The Commission notes that many of the same providers supported the establishment of a cost recovery methodology for VRS at that time, and believe that the benefits attributed to the adoption of a price cap methodology in that context will adhere equally in the VRS context.

127. The Commission seeks comment on this proposal. Should the specifics of this methodology be modified for VRS? For example, should the Commission adopt a different Inflation Factor or Efficiency Factor? Should the standards for an exogenous cost adjustment be modified? Is a three year time frame appropriate for VRS? What other factors might be appropriate for inclusion in such a methodology?

2. Contracts

128. In section IV.B.5 above, the Commission seeks comment on whether to allow VRS providers to require VRS users who are either (i) new-to-category VRS users (i.e., have not previously signed up for VRS) or (ii) switching from another VRS provider to enter into a service contract after the adoption of a per-user compensation mechanism. If the Commission was to adopt such a proposal, during what phase of the transition described above would it be appropriate to allow providers to require VRS users to enter into contracts?

V. ALTERNATIVES TO STRUCTURAL REFORM

129. The Commission seeks comment on the rate methodology the Commission should adopt should (i) the Commission choose not to adopt the per-user rate methodology proposed in document FCC 11-184 or (ii) should the transition to a per-user methodology be terminated before it is completed. The Commission notes that each of the reform proposals described in this NPRM – increasing VRS availability (via broadband subsidies, new to category incentives, and enterprise VRS), ensuring the interoperability and portability of VRS access technologies via standards, compensating VRS providers at a single at-scale rate, and moving to a per-user compensation scheme – is worth pursuing in itself to improve the program, although as they are mutually reinforcing it explores implementing them all, sequenced appropriately.

130. The Commission notes that the Commission in the 2010 TRS Rate Methodology Order, 75 FR 49491, August 13, 2010, adopted interim VRS rates representing the average of the tiered rates established in 2007, which were based on providers' projected costs, and the Administrator's 2010

proposed rates, which, in turn, were based on providers' actual, historical costs. These interim rates reflect a balance between the goal of ensuring that VRS providers recover from the Fund only the reasonable costs caused by their provision of VRS and the goal of ensuring quality and sufficient service during the pendency of this proceeding. In anticipation of the proposals set forth in document FCC 11-184, CGB waived the May 1, 2011 Fund Administrator filing requirement for VRS payment formulas and revenue requirements for the 2011-12 TRS Fund year, and subsequently concluded that it would be more efficient and less disruptive to extend the existing interim rates while concluding the evaluation of the issues and the substantial record developed in response to this proceeding.

131. The Commission propose that if a per-minute rate methodology is retained, the Commission adopt, consistent with the recommendations of the Administrator for the 2010-2011 fund year, a per-minute rate based on weighted average actual per-minute provider costs for the most recently completed fund year. The Commission in the 2010 TRS Rate Methodology Order found that the Administrator's "proposed rates based on actual costs [were] reasonable and supported by record evidence," and that it was suitable that "the Commission exercise its discretion to use them as a basis for setting an interim rate for the 2010-2011 Fund year." Although the Commission has, during this interim period, allowed providers to recover their costs at rates well above those based on actual cost data so as to avoid "a significant and sudden cut to providers' compensation," in the event that broader structural reform is not possible at this time, the Commission finds it reasonable to move to a rate based entirely on providers' actual costs. The Commission seeks comment on this proposal.

132. The Commission further proposes to eliminate the current tier structure and utilize a single rate based on the weighted average of providers' actual costs. The rationale for adopting the tiers in the 2007 TRS Rate Methodology Order was that providers with a relatively small number of minutes generally have higher costs. The Commission expects data from providers will show that this remains the case today. Consistent with its analysis above, however, the tiered rate structure supports an unnecessarily inefficient market structure, and apparently provides insufficient incentive for VRS providers to achieve

minimal efficient scale. Further, its findings in the 2010 TRS Rate Methodology Order continue to hold true: “[t]o the extent that one provider commands a substantial share of the VRS market, the Commission finds that [the Administrator’s] use of weighted averages is appropriate, and properly balances, on one side, the greater relative costs incurred by smaller providers with, on the other, not penalizing providers operating at lower costs for their greater efficiency. The Commission therefore concludes that [the Administrator’s] methodology, and use of actual cost information submitted by the providers and certified under penalty of perjury to be true and correct, [was] reasonable.” The Commission seeks comment on this proposal to eliminate the current tier structure and utilize a single rate based on the weighted average of providers’ actual costs.

133. The Commission seeks comment on what steps the Commission and the Administrator should take to implement these proposals, should the Commission choose to adopt them. For example, by when should the Administrator require VRS providers to file the requisite cost data? To what extent should the Administrator, or providers, obtain independent audits of the data to be submitted? Should the Commission accept late filed data, or simply calculate the rate based on data submitted by the deadline established by the Commission or the Administrator? What other steps must the Commission or the Administrator take to ensure that a per-minute rate based on providers’ actual costs can be established in an expeditious fashion? Finally, the Commission seeks comment on whether there are other viable alternatives to adopting a per user or per minute rate methodology. The Commission proposes that ignoring the last ten years of experience with the TRS program, both good and bad, and the technological progress that has occurred over the same period, and simply continuing with the program as currently structured (perhaps with relatively minor tinkering around the margins) is simply not a viable option for the Commission in its duty to manage responsibly the contributions of millions of Americans to a program that disburses over half a billion dollars a year. The Commission therefore discourages commenters from assuming a Panglossian stance with respect to a status quo that is increasingly failing to meet the needs and expectations of its stakeholders including, especially, actual and potential VRS users.

VI. LEGAL AUTHORITY

134. The Commission seeks comment on our legal authority to adopt each of the options and proposals discussed in document FCC 11-184. As noted above, section 225 of the Act requires the Commission “to make available to all individuals in the United States a rapid, efficient nationwide communication service, and to increase the utility of the telephone system of the Nation,” and directs that “the Commission shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.” Section 225 of the Act further requires that the Commission, among other things, “establish functional requirements, guidelines, and operations procedures for telecommunications relay services,” “establish minimum standards that shall be met in carrying out [the provision of TRS],” and “require that users of telecommunications relay services pay rates no greater than the rates paid for functionally equivalent voice communication services.” Does section 225 of the Act, standing alone, provide sufficient authority for the options and proposals contemplated in document FCC 11-184? Do the Commission’s grants of authority in the Act, including those in sections 1, 2, 4(i), 255, and 303(r), and section 706 of the Telecommunications Act of 1996, provide additional authority? Does section 254 of the Act, which sets forth the goal that “consumers in all regions of the nation, including low-income consumers, . . . should have access to telecommunications and information services,” provide additional legal authority for proposals in this item targeted towards low-income consumers?

135. The Commission seeks additional comment on our authority to establish the TRSBPP. Specifically, the Commission seeks comment on our authority to collect contributions to the TRS Fund to support broadband Internet access for low income VRS users and to disburse the relevant support. Section 225 of the Act provides that the Commission “shall ensure that interstate and intrastate telecommunications relay services are available, to the extent possible and in the most efficient manner, to hearing-impaired and speech-impaired individuals in the United States.” The Commission seeks comment on whether VRS is not “available” to a potential user who is unable to afford broadband Internet access.

Does section 225(b)(1) of the Act, standing alone, provide authority for the Commission to assess contributions and disburse support for broadband Internet access?

136. Section 225 of the Act does not explicitly describe how the Commission must ensure that TRS is available. The subsection that most nearly describes how TRS providers should be compensated is section 225(d)(3) of the Act, which addresses recovery of costs in the context of jurisdictional separations. Section 225(d)(3)(A) of the Act requires the Commission to “prescribe regulations governing the jurisdictional separation of costs for the services provided pursuant to this section,” which the Commission construe to mean that it should specify how providers distinguish between interstate and intrastate costs. Subsection (B) further provides that the Commission’s regulations “shall generally provide that costs caused by interstate telecommunications relay services shall be recovered from all subscribers for every interstate service.” The statute does not address how those costs are to be recovered from subscribers, nor how payments are to be disbursed to providers. In the absence of such guidance, the Commission chose to establish a shared funding mechanism – the TRS Fund – over other possible funding mechanisms.

137. Does section 225(d)(3)(B) of the Act limit the Commission’s ability to disburse support only for “costs caused by interstate telecommunications relay services,” or does the Commission have authority to disburse additional funds to the extent necessary to ensure that the mandate of section 225(b)(1) of the Act – to make TRS “available” – is met? Would section 225(d)(3)(B) of the Act authorize the Commission to require contributions to the TRS Fund to support broadband Internet access if the Commission finds that broadband Internet access is necessary to meet its section 225(b)(1) of the Act mandate? Are there other considerations?

138. Does section 706(b) of the Telecommunications Act of 1996 provide additional support for the TRSBPP? The Commission found in the Seventh Broadband Progress Report that broadband is not “being deployed to all Americans in a reasonable and timely fashion.” Section 706(b) of the Telecommunications Act of 1996 directs the Commission, in light of that determination, to “take immediate action to accelerate the deployment” of broadband. Does this directive provide the

Commission with additional authorization to utilize the TRS Fund to promote broadband availability in conjunction with the goal of promoting the availability of TRS?

139. The Commission notes another, more recent legislative development on this issue. Congress in the CVAA authorized the Commission to provide up to \$10 million support annually from the Fund for programs for “the distribution of specialized customer premises equipment designed to make telecommunications service, Internet access service, and advanced communications, including interexchange services and advanced telecommunications and information services, accessible by low-income individuals who are deaf-blind.” Does this explicit authorization to utilize the TRS Fund to pay for equipment used to make non-TRS services available to Americans with disabilities limit the Commission’s authority to utilize the TRS Fund to effectuate the availability mandate in section 225(b)(1) or other mandates in the Act?

140. The CVAA also directs the Chairman to create an Emergency Access Advisory Committee “[f]or the purpose of achieving equal access to emergency services by individuals with disabilities.” The Committee is charged, among other things, with making recommendations about “what actions are necessary as a part of the migration to a national Internet protocol-enabled network . . . that will ensure access to emergency services by individuals with disabilities,” and “for the possible phase out of the use of current-generation TTY technology to the extent that this technology is replaced with more effective and efficiency technologies and methods to enable access to emergency services by individuals with disabilities.” The Commission has authority to implement the recommendations of the Committee, and to promulgate “any other regulations . . . as are necessary to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network, where achievable and technically feasible.” Ensuring that individuals with hearing and speech disabilities who use ASL have access to VRS would, by definition, ensure that those people would have access to an “Internet protocol-enabled emergency network,” as (i) VRS providers must afford their users access to 911 service and (ii) VRS requires that the user obtain a high speed internet connection

to access the service. Ensuring access to VRS also would facilitate the phase out of TTY technology to the extent that the cost of broadband Internet access is preventing current TTY users from transitioning to VRS or other forms of Internet-based TRS. The Commission seeks comment on whether these provisions provide the Commission with authority, to the extent recommendations of the Committee are consistent, to create the TRSBPP. The Commission seeks comment also on any other sources of authority that would enable the Commission to require contributions to the TRS Fund and disburse funds from the TRS Fund for the purpose of supporting broadband Internet access for low-income individuals who are deaf, hard of hearing, have a speech disability, or are deaf-blind and use ASL as their primary form of communication.

141. The Commission also seeks comment on its authority to collect contributions to the TRS Fund to provide reimbursements for relay hardware and software used by the consumer, including installation, maintenance costs, and testing. Does the “availability” mandate in section 225(b)(1) of the Act discussed in the preceding paragraphs provide authority for such reimbursements? Does Section 706(b) of the Telecommunications Act of 1996 or the CVAA provide additional authority?

VII. OTHER ISSUES

142. The Commission seeks comment on other issues related to the issues addressed in document FCC 11-184.

A. Data Security and Privacy

143. The Commission notes that the privacy-based limitations on the government’s access to customer information in Title II of Electronic Communications Privacy Act (ECPA), section 222 of the Act, and its implementing rules and the privacy provisions of the Cable Act, may be implicated by the collection of the data discussed in document FCC 11-184. The Commission seeks comment on whether any of these pre-existing regulatory or statutory requirements create any concerns with respect to its ability to adopt the proposals discussed in document FCC 11-184, including the storage by a database administrator of customer data discussed in Appendix D of document FCC 11-184. The Commission

seeks comment on how best to address these concerns. Would it be appropriate or necessary to require VRS users to consent to certain disclosures as a condition of receiving service in order to ensure that the VRS program is operated efficiently and the Commission and the Fund Administrator can fulfill their auditing and management functions effectively? What would be the appropriate extent of such a consent requirement, and what other regulatory privacy protections, if any, would be necessary if such a requirement were adopted?

B. Request for Data

144. The Commission request that providers and other interested parties provide such data as is necessary to support their comments in response to document FCC 11-184. The Commission notes that it may find factual information supported by affidavit or certification to be more persuasive than information that is not so supported. In that regard, the Commission further notes that any submissions containing knowing or willful misrepresentations, whether or not supported by affidavit or certification, are punishable by fine or imprisonment.

C. Support Of Certification Applications And Annual Reports By Certification Under Penalty Of Perjury

145. In the 2011 VRS Certification Order, the Commission adopted interim rules requiring that providers certify, under penalty of perjury, that their certification applications and annual compliance filings required under § 64.606(g) of the Commission's rules are truthful, accurate, and complete. The Commission found good cause to adopt these interim rules to ensure that providers seeking certification and providers holding certifications may be held accountable for their submissions as they seek to secure or retain certification under the rules adopted in the 2011 VRS Certification Order. The Commission concluded that interim rules requiring certification by a Chief Executive Officer, Chief Financial Officer, or other senior executive of an iTRS provider, under penalty of perjury, to the truthfulness, accuracy, and completeness of certification applications and annual compliance filings were a necessary and critical component of its efforts to curtail fraud and abuse. In particular, the Commission found that these interim

rules would help to ensure that it has true and complete information, thereby ensuring that only qualified providers are eligible for compensation from the Fund.

146. Specifically, the Commission adopted the following interim rules:

The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an applicant for Internet-based TRS certification under this section with first hand knowledge of the accuracy and completeness of the information provided, when submitting an application for certification under paragraph (a)(2) of this section, must certify as follows: I swear under penalty of perjury that I am ___(name and title), _an officer of the above-named applicant, and that I have examined the foregoing submissions, and that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in this submission, are true, accurate, and complete.

The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an Internet-based TRS provider under this section with first hand knowledge of the accuracy and completeness of the information provided, when submitting an annual report under paragraph (g) of this section, must, with each such submission, certify as follows: I swear under penalty of perjury that I am ___(name and title), _an officer of the above-named reporting entity, and that I have examined the foregoing submissions, and that all information required under the Commission's rules and orders has been provided and all statements of fact, as well as all documentation contained in this submission, are true, accurate, and complete.

147. The Commission tentatively concludes that it should adopt these rules permanently, and seeks comment on this tentative conclusion. The Commission also seeks comment on whether there are

any additional elements that should be covered by these proposed certifications, and, in general, whether there are any additional safeguards that it should adopt as rules to ensure the veracity and completeness of provider submissions, and to help ensure that providers comply with the Commission's TRS rules and policies.

VIII. INITIAL REGULATORY FLEXIBILITY ANALYSIS

148. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in document FCC 11-184. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments to document FCC 11-184. The Commission will send a copy of document FCC 11-184, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

A. NEED FOR, AND OBJECTIVES OF, THE PROPOSED RULES

149. In document FCC 11-184, the Commission seeks comment on a series of proposals to improve the structure and efficiency of the VRS program, to ensure that it is available to all eligible users and offers functional equivalence – particularly given advances in commercially-available technology – and is as immune as possible from the waste, fraud, and abuse that threaten the long-term viability of the program as it currently operates.

150. Among these proposals, the Commission proposes to establish a “TRS Broadband Pilot Program” (TRSBPP) to utilize the TRS Fund to provide discounted broadband Internet access to low-income deaf, hard of hearing, deaf-blind, and speech disabled Americans who use ASL as their primary form of communication, and providing incentives to providers for adding new-to-category customers. The Commission proposes such a subsidy to meet the objective of increasing utilization of VRS by eligible individuals who cannot currently afford broadband.

151. The Commission seeks comment on whether the TRSBPP should support fixed services, mobile services, or both. Fixed connections – whether wireline or wireless – that are advertised as capable of delivering 256 kbps, generally deliver such speeds to their customers, and can be shared by all members of a residential unit. The Commission proposes that broadband providers will provide discounts to eligible households or residences and receive reimbursement from the TRS Fund for the provision of such discounts. The Commission proposes to establish the discount amount for the TRSBPP at a level that will make broadband Internet access service capable of supporting VRS at no cost, or very low cost, to consumers. The Commission seeks comment on how to set the amount of the discount that should be provided to qualifying households or residences. Given the Commission’s experience in administering the Lifeline and Link Up programs, it proposes to adopt the Lifeline and Link Up certification and verification rules that are ultimately adopted in the Lifeline and Link Up Modernization NPRM proceeding, modified as necessary to reflect the differences between possible future changes in the Lifeline program and the proposed TRSBPP.

152. In addition, the Commission proposes to concretely define iTRS access technology, which will help ensure that the rules governing VRS can be applied equally to any medium used to access VRS. The goal of establishing standards for iTRS access technology is to meet the Commission’s policy objectives of facilitating an open, competitive market for VRS by supporting interoperability, portability, affordability, supportability and compatibility of VRS equipment. Specifically, the Commission proposes: (1) defining “iTRS access technology” as “any equipment, software, or other technology issued, leased, or provided by an Internet-based TRS provider that can be used to make or receive an Internet-based TRS call”; (2) establishing standards for iTRS access technology; and (3) supporting the use of off-the-shelf iTRS access technology. The Commission intends to apply its definitions and standards in a manner that will allow for the use of VRS through off-the shelf technology because this will give VRS users enhanced choice and accessibility to utilize VRS. Accordingly, the Commission seeks comment on the proposal.

153. In addition, the Commission seeks comment on the extent to which the statute supports the use of the Fund to support iTRS access technology research and development costs. Research and development would help to achieve the goals of establishing standards and furthering technological advancements that both meet the needs of VRS users, and provide compatibility with mainstream, off-the-shelf equipment. If research and development are supported by the Fund, then the Commission's goals of providing greater access to VRS will be better achieved.

154. Next, the Commission explores the option of instituting a more efficient compensation mechanism that reduces incentives for waste, fraud, and abuse by shifting from a per-minute to a per-user compensation mechanism with a specific plan for transitioning the industry structure to ensure economies of scale. Per-minute compensation has provided an incentive for the manufacturing of illegitimate minutes by some providers in order to increase reimbursements. Shifting to a per-user compensation mechanism will remove the incentive to increase VRS traffic through illegitimate means. The Commission states, "[t]he ultimate result could be a program in which providers' incentives are aligned with the statute's goals of efficiency, functional equivalence, choice, and maximizing access to VRS, the Fund could be paying an effective rate per user that may better reflect the actual costs of providing VRS than is currently the case, and which could eliminate the current tiered rates, which provide seemingly indefinite support for subscale providers and introduce extra complexity into the management of the program."

155. The Commission specifically proposes a greater per-user reimbursement rate to VRS providers for their registered enterprise users vs. residential users. This proposal is intended to serve two objectives: 1) to account for the potentially greater volume of calls an enterprise user may make, and 2) to provide an incentive to providers to market and support their services to deaf individuals in the workplace. Accordingly, the Commission seeks comment on this separate proposal.

156. The transition phase for restructuring VRS as described above is intended to account for current subscale providers who may need time to attempt to achieve scale. By subscale, the Commission refers to providers whose cost of delivering VRS may be higher than costs other providers may incur

because of their small market share. The Commission notes that any transition will be accompanied by risk. However, if adopted, an appropriately implemented structural reform program and transition process will give each provider a real opportunity to achieve minimum efficient scale during the transition period and result in an end state for the program that is better for VRS users, as well as being more sustainable for the Fund. To that end, the Commission seeks comment on whether to allow VRS providers to require VRS users who are either (i) new-to-category VRS users (i.e., have not previously signed up for VRS) or (ii) switching from another VRS provider, to enter into a service contract after the adoption of a per-user compensation mechanism in order to support the growth of smaller providers under the new structure.

157. The rules addressed in this section raise questions about related new reporting requirements that will be addressed in section 0. Even though the Commission record is not yet ample enough for it to propose specific rules, the Commission raises questions about record-keeping, reporting and info-gathering, e.g., info-gathering pursuant to the PRA, and seek comments on these issues, because comments received on those areas may guide us toward a more efficient administration of its proposed use of a per-user mechanism; its proposed expanded use of R&D; and its proposed changes in the definition of iTRS. Comments on proposed changes in the Commission's record-keeping, reporting and information gathering actions are directly related to these major proposed structural changes in VRS rules because proposed changes in these recordkeeping and informational areas will in all likelihood facilitate an improved monitoring of all costs imposed on impacted small entities by all of its proposed general structural reforms. For example, the Commission may, to facilitate improved monitoring of the costs of its overall structural reforms, decide to require service providers of all kinds, including broadband-based services providers, to provide certain specific types of reports on their activities and may require them to hire accountants to prepare independent audits of their activities and operations in this context. The specific questions the Commission raise with regard to record-keeping, reporting, and info-gathering, and the comments it seeks on these issues, are discussed in greater detail in Section 0, the Section 0 of this IRFA where an expanded treatment of such issues is required.

B. LEGAL BASIS

158. The legal basis for any action that may be taken pursuant to document FCC 11-184 is contained in sections 1, 2, 4(i), 225, 255, 303(r), and 706 of the Communications Act of 1934, as Amended, 47 U.S.C. 151, 152, 154(i), 225, 254, 255, 303(r), and 1302(b).

C. DESCRIPTION AND ESTIMATE OF THE NUMBER OF SMALL ENTITIES TO WHICH THE PROPOSED RULES MAY APPLY

159. Small Businesses. Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. Entities that provide VRS could generally be referred to as, “Wired Telecommunications Carriers” or “All Other Telecommunications”.

160. Wired Telecommunications Carriers. The Census Bureau defines this category as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”

161. In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees. Census data for 2007 shows 3,188 firms in this category. Of these 3,188 firms, only 44 had 1,000 or more employees. While the Commission could not find precise Census data on the number of firms with in the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. On this basis, the Commission estimates that a

substantial majority of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category, are small.

162. All Other Telecommunications. Under the 2007 U.S. Census definition of firms included in the category “All Other Telecommunications (NAICS Code 517919)” comprises “establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”

163. In this category, the SBA deems a provider of “all other telecommunications” services to be small if it has \$25 million or less in average annual receipts. For this category of service providers, Census data for 2007 shows that there were 2,383 such firms that operated that year. Of those 2,383 firms, 2,346 (approximately 98%) had \$25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. On this basis, Commission estimates that approximately 98% or more of the providers of interconnected VoIP, non-interconnected VoIP, or both in this category are small.

164. Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of “Paging” and “Cellular and Other Wireless Telecommunications.” Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this

category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (“PCS”), and Specialized Mobile Radio (“SMR”) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

165. The Commission notes that under the standards listed above some current VRS providers and potential future VRS providers would be considered small businesses. There are currently ten eligible VRS providers, five of which may be considered small businesses. In addition, there are several pending applications from entities seeking to become certified to provide VRS that may be considered small businesses. Although the Commission does not estimate a significant adverse economic impact on such entities, it nevertheless seeks comment on the potential impact of the rules and policies proposed in document FCC 11-184 due to the fact that some affected entities would likely be considered small businesses.

D. DESCRIPTION OF PROJECTED REPORTING, RECORDKEEPING, AND OTHER COMPLIANCE REQUIREMENTS

166. Certain rule changes proposed in this proceeding would, if adopted, modify rules governing data collection obtained from TRS providers and might also modify the filing of information with the Administrator. For example, the Commission may decide that it is sufficient to grant to the Administrator a general authority to request information, or it may decide to require providers to submit additional detailed information, such as information regarding their financial status, e.g., a cash-flow-to-debt ratio. Proposed rule changes may also modify records of calls so that Enterprise Users and Enterprise VRS Employers can be readily identified based on their call history. Such changes may also authorize the Administrator to require VRS providers to file the requisite cost data, and may require the Administrator

and/or providers to obtain independent audits of the data to be submitted. Additional rule changes may result in a Commission decision to accept late-filed data, or in the alternative to calculate the VRS rate based on data submitted by the deadline established by the Commission or the Administrator.

167. Section 64.604(c)(5)(iii)(C) of the Commission’s rules requires TRS providers to “provide the administrator with true and adequate data necessary to determine TRS Fund § 64.604(c)(5)(iii)(C) of its rules requires TRS providers to “provide the administrator with true and adequate data necessary to determine TRS Fund revenue requirements and payments.” The Commission has proposed to place the primary responsibility for managing the TRSBPP enrollment, certification, and eligibility verification processes on VRS providers. This may result in a Commission decision to require VRS providers to collect and maintain user enrollment, initial certification, and verification of eligibility for TRSBPP support documentation for submission upon request to the TRS Fund Administrator or the Commission. The Commission may also determine that the TRS Fund Administrator should be empowered to collect additional data under the proposals in document FCC 11-184. For example, the Commission may decide that broadband providers that receive disbursements from the TRS Fund should be required to report certain information.

168. The Commission is also considering record keeping requirements regarding individuals seeking TRSBPP support. One possibility would be to adopt the existing federal Lifeline program eligibility criteria. As discussed in the Lifeline and Link Up Reform and Modernization NPRM, Lifeline discounts are available to eligible consumers in households that qualify as “low-income,” but there is no uniform national definition of households for all programs.

169. The Commission will provide an analysis of the costs associated with any new record keeping or reporting requirements it adopts based in part on the record in this proceeding. The costs of compliance with new rules adopted in this proceeding will be fully reimbursed by the TRS Fund as the costs of compliance with the current VRS are reimbursable from the TRS Fund.

170. Current VRS providers and newly certified VRS providers that may fall into the small business categories listed in section C above will be subject to the costs imposed by any rules adopted as a result of this proceeding. If the Commission adopts any new information collection requirements, the Commission will publish another notice in the Federal Register inviting the public to comment on the requirement, as mandated by the Paperwork Reduction Act of 1995. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment from the public on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.

E. STEPS TAKEN TO MINIMIZE SIGNIFICANT ECONOMIC IMPACT ON SMALL ENTITIES AND SIGNIFICANT ALTERNATIVES CONSIDERED

171. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

172. In general, alternatives to proposed rules are discussed only when those rules pose a significant adverse economic impact on small entities. In this context, however, the proposed rules generally confer benefits as explained below. Therefore, the Commission limits its discussion of an alternative to paragraph number twenty-four below.

173. The purpose of the proposed TRSBPP is to provide discounted broadband Internet access to low-income deaf, hard of hearing, deaf-blind, and speech disabled Americans who use ASL as their primary form of communication. Such a program would be consistent with the recommendations of the National Broadband Plan, the Commission’s broader effort to meet the 21st century communications needs

of low-income consumers, and the Act. In addition, the TRSBPP will help to ensure that Fund resources are not spent on merely transferring existing users back and forth between providers, and instead are used to expand the availability of VRS to more users. This in turn would confer a benefit on small entities operating as VRS providers in that it would increase the current user base, thereby offering greater business opportunities for VRS providers.

174. As noted above, the Commission seeks comment on new iTRS definitions and standards that will facilitate the use of VRS through mainstream equipment and provide better functionality for VRS users. The Commission believes that setting such uniform definitions and standards for VRS technology will stabilize the VRS market and allow for the greatest number of potential users to avail themselves of VRS. The more users who are registered, the more financial gain for VRS providers. In addition, with established definitions and standards, a level playing field for all providers will be possible. Finally uniform application of VRS rules to all forms of VRS equipment will provide predictability for VRS providers. Therefore, the Commission believes that such measures to provide definitions and standards will benefit all industry participants including small businesses.

175. Moreover, if the Commission adopts rules based on the record received in response to its proposal to support research and development through the Fund, the Commission believes that all entities, small and large, will benefit from such funding. The Commission seeks comment on this position.

176. The Commission considers an alternative to structural reform by proposing the possibility of adopting per-minute rates based on a criterion not discussed above, i.e., weighted average actual per-minute provider costs for the most recently completed fund year, and by eliminating the current tier structure. Although the Commission believes this alternative would neither achieve the policy goals set forth above, nor minimize the adverse economic impact on small entities, the Commission nevertheless seeks comment on this alternative proposal.

177. Applications to become a certified VRS provider are voluntarily submitted. If a small entity, as defined by the SBA, applies for certification by showing that it can comply with all of the

Commission's rules, including the proposed new rules in document FCC 11-184, its expenses will be reimbursed from the Fund once it becomes a certified provider, regardless of whether the Commission adopts the proposed structural reforms to the VRS program. The Interstate TRS Fund is sized each year based on the foreseeable costs associated with providing service in compliance with the Commission rules. A contribution factor based on this proposed Fund size is then used to determine the amount each entity responsible for paying into the Fund must contribute. The Commission believes that its proposals will not impose an adverse financial burden on entities, including small businesses, because entities that are able to provide VRS in compliance with these proposed structural reforms will continue to be promptly reimbursed from the Interstate TRS Fund for all costs associated with compliance with the Commission's proposed reforms. Although all participating VRS providers will be compensated from the Fund for the costs of providing service, the Commission seeks comment on whether there may still be some adverse financial impact on a substantial number of small entities resulting from restructuring VRS.

178. Each of the proposed rules, with the exception of the alternative discussed above in paragraph twenty-four, confers a benefit rather than imposes a significant adverse economic impact on regulated small businesses. Therefore, the need for consideration of alternatives is very limited. However, the Commission asks for comment on the reimbursement of all costs incurred via compliance with new structural reforms in case there are costs of such compliance that may not have been considered fully or may not be compensable from the Fund under the proposed structural reforms.

F. FEDERAL RULES THAT MAY DUPLICATE, OVERLAP, OR CONFLICT WITH PROPOSED RULES

179. None.

IX. ORDERING CLAUSES

Pursuant to sections 1, 2, 4(i), 4(j), 225, 251, 254 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 225, 251, 254, 303(r), document FCC 11-184 IS ADOPTED.

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 11-184, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,
Secretary.

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